

Proactive Release

Date: 8 August 2023

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister for Trade & Export Growth

Title	Reference
Report of the Cabinet Economic Development Committee: Period Ending 23 June 2023	CAB-23-MIN-0258
New Zealand – European Union Free Trade Agreement: Approval of Final Outcome and Authority to Sign	DEV-23-MIN-0120
New Zealand – European Union Free Trade Agreement: Approval of Final Outcome and Authority to Sign	

The additional information relevant to this proactive release was published to the Ministry of Foreign Affairs and Trade's (The Ministry's) website and is available via the below links:

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-National-Interest-Analysis.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Table-of-Contents.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Consolidated-Text-of-all-Chapters.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Consolidated-Text-of-all-Annexes.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/European-Union-Tariff-Schedule.pdf>

<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/New-Zealand-Tariff-Schedule.pdf>

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 9(2)(b)(ii): to avoid prejudice to the commercial position of another party;
- 9(2)(d): to protect the economic interests of New Zealand;

- 9(2)(g)(i): to protect the free and frank expression of opinions by departments; and
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Economic Development Committee: Period Ended 23 June 2023

On 26 June 2023, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 23 June 2023:

DEV-23-MIN-0120

New Zealand – European Union Free Trade Agreement: Approval of Final Outcomes and Authority to Sign
Portfolio: Trade and Export Growth

CONFIRMED

Diana Hawker
Acting Secretary of the Cabinet

Proactively Released by the Minister for Trade and Export Growth



Cabinet Economic Development Committee

Minute of Decision

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New Zealand – European Union Free Trade Agreement: Approval of Final Outcomes and Authority to Sign

Portfolio Trade and Export Growth

On 21 June 2023, the Cabinet Economic Development Committee:

Background

- 1 **noted** that negotiations for a Free Trade Agreement between New Zealand and the European Union (the NZ-EU FTA) took place over four years, and were concluded on 30 June 2022;
- 2 **noted** that outcomes from the NZ-EU FTA were within mandates approved by Cabinet in 2017 [EGI-17-MIN-0212], 2019 [DEV-19-MIN-0073], 2020 [CAB-20-MIN-0231.01], and 2021 [DEV-21-MIN-0182], and the mandates for a limited range of additional issues approved by Delegated Ministers in June 2022;

Final outcome

- 3 **noted** that that economic modelling on the NZ-EU FTA suggests that New Zealand's economy will benefit from the FTA through an increase to GDP of up to \$1.4 billion and exports to the EU of up to \$1.8 billion, per year, by 2035;
- 4 **noted** that the NZ-EU FTA preserved New Zealand policy space in key areas of defensive interest, in particular the NZ-EU FTA:
 - 4.1 includes the Treaty of Waitangi exception, which:
 - 4.1.1 ensures that the FTA will not prevent the Crown from meeting its obligations to Māori, and New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement;
 - 4.1.2 in response to Wai 2522, builds on this through additional carve outs for measures to protect Māori rights, interests, duties and responsibilities in digital trade, and trade enabled by electronic means;
 - 4.2 preserves the government's right to regulate, ensuring that future governments will be able to continue to protect the environment, public health care, public education and so on;
 - 4.3 does not involve any changes to the Pharmac model;

- 4.4 enables government procurement policies to achieve social, labour and environment outcomes;
- 4.5 does not lower labour or environmental standards, and will in fact contribute to strengthening the shared objectives on climate change and sustainable development more generally;
- 4.6 excludes Investor-State Dispute Settlement (ISDS);
- 5 **noted** that the NZ-EU FTA will incur some additional costs for New Zealand, including:
 - 5.1 foregone tariff revenue estimated at \$74 million per annum:
 - 5.1.1 note that this is due to the removal of tariffs on imports from the EU, which will have a corresponding impact on the operating balance and net core Crown debt;
 - 5.1.2 authorise the Minister of Finance to make any necessary decisions on the fiscal management treatment of this expenditure;
 - 5.2 costs associated with the extension of term of copyright by 20 years, estimated at up to \$15.4 million for literary works and sound recordings, plus potential costs for artistic works and social costs from further limiting access to copyright works within four years of the FTA entering into force (which will accrue in advance of UK FTA commitments owing to a shorter transition period);
 - 5.3 total costs to producers, importers and exporters, estimated at up to \$30 million arising from the outcome agreed in the NZ-EU FTA to protect certain EU Geographical Indications;
 - 5.4 ongoing costs of \$10,000 per annum for the Intellectual Property Office of New Zealand to maintain an expanded register, to be met from trade mark fees recovery;
 - 5.5 up to \$25,000 per annum to consider and register new EU Geographical Indications nominations, and costs equivalent to an estimated 6 FTEs, totalling \$915,000 per annum, to cover administrative enforcement of Geographical Indications:
 - 5.5.1 note that it is expected that the cost of administrative enforcement will reduce over time;
 - 5.5.2 s9(2)(f)(iv), s9(2)(g)(i)
 - 5.6 various other administrative and compliance costs associated with commitments under the NZ-EU FTA (e.g. servicing FTA committees) which would be met from baseline funding;
- 6 **noted** that the NZ-EU FTA has been negotiated throughout with:
 - 6.1 increased and active engagement with Māori;
 - 6.2 significantly stepped up engagement with other stakeholders, including the Council of Trade Unions;

- 6.3 an unprecedented level of transparency with respect to the negotiating text;
- 6.4 independent analysis of the final outcomes, both in respect to Māori, and more broadly;
- 7 **noted** that post-conclusion analysis of the final outcomes of the NZ-EU FTA for Māori are varied, as would be expected, with most Te Tiriti/Treaty partners the Ministry of Foreign Affairs and Trade engages with being overall positive about the FTA, while some others are more critical;

Approval of text

- 8 **approved** the text of the NZ-EU FTA, attached as Annex 4 to the paper under DEV-23-SUB-0120, and the content of the National Interest Analysis, attached as Annex 3 to the paper under DEV-23-SUB-0120, subject to any minor or technical changes arising from the final legal review of the 24 language versions of the NZ-EU FTA;
- 9 **authorised** the Minister for Trade and Export Growth, in consultation with relevant portfolio Ministers where appropriate, to approve any changes to the text of the NZ-EU FTA or the National Interest Analysis that do not materially alter their content, before their public release at signature;

Signature and presentation to the House

- 10 **authorised** signature of the NZ-EU FTA;
- 11 **noted** that it is intended that the European Commission and New Zealand sign the NZ-EU FTA in Brussels on 9 July 2023;
- 12 **agreed** that the National Interest Analysis be released after signature and published on the Ministry of Foreign Affairs and Trade's website, consistent with regular and established practice;
- 13 **agreed** that, following signature, the text of the NZ-EU FTA and the National Interest Analysis be presented to the House of Representatives for the purposes of parliamentary treaty examination, in accordance with Standing Order 405;

Legislative implications

- 14 **noted** that implementation of New Zealand's obligations under the NZ-EU FTA will require amendments to the legislation specified in paragraphs 60-62 of the paper under DEV-23-SUB-0120;
- 15 **agreed** that the legislative amendments necessary to comply with the obligations relating to Geographical Indications in the NZ-EU FTA, as set out in Annex 2 to the paper under DEV-23-SUB-0120, will be given effect through the New Zealand-European Free Trade Agreement Legislation Bill (the Bill);
- 16 **agreed** that all other legislative amendments necessary to comply with the obligations in the NZ-EU FTA will be given effect through the Bill;
- 17 s9(2)(f)(iv)

- 18 **invited** the Minister for Trade and Export Growth, the Minister of Commerce and Consumer Affairs, and relevant portfolio Ministers, including but not limited to the Minister of Agriculture, to issue drafting instructions to the Parliamentary Counsel Office to draft the Bill to give effect to the NZ-EU FTA;
- 19 **authorised** the Minister for Trade and Export Growth, the Minister of Commerce and Consumer Affairs, and relevant portfolio Ministers, including but not limited to the Minister of Agriculture, to make any subsequent policy decisions consistent with the paper under DEV-23-SUB-0120 to facilitate the drafting of legislation;
- 20 s9(2)(f)(iv)

Entry into force and implementation

- 21 **noted** that the NZ-EU FTA will enter into force on such date as the Parties may agree in writing, once both Parties confirm completion of their respective applicable legal procedures for entry into force, and that both sides are working towards the FTA entering into force by May 2024 if possible;
- 22 s9(2)(f)(iv), s9(2)(g)(i)
- the ongoing \$10,000 annual cost of maintaining the Geographical Indicators register will be met from cost recovery of trade mark fees;
- 23 **agreed** that the required changes to copyright law not be implemented now, but as part of the review of the Copyright Act 1994, with the scale and timeframes of that review to be determined in 2024.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Dr Ayesha Verrall
Hon Damien O'Connor
Hon David Parker
Hon Kieran McAnulty
Hon Ginny Andersen
Hon Dr Duncan Webb
Hon Rino Tirikatene
Hon Rachel Brooking
Hon Jo Luxton

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Office of the Minister for Trade and Export Growth

Cabinet Economic Development Committee

New Zealand – European Union Free Trade Agreement: Approval of Final Outcomes and Authority to Sign

Proposal

- 1 This paper seeks approval of the final outcomes of the Free Trade Agreement between New Zealand and the European Union (NZ-EU FTA or FTA) and authority to sign the FTA. Approval is also sought for the National Interest Analysis (NIA) for the FTA and, following signature, for presentation of the FTA and NIA to the House of Representatives for international treaty examination.
- 2 Further, the paper seeks approval for the legislation required to implement New Zealand's obligations under the FTA as well as approval for the Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office to draft the New Zealand-European Union FTA Legislation Bill.

Relation to government priorities

- 3 The "Speech from the Throne" on 26 November 2020 outlined that the Government would pursue high quality and comprehensive trade agreements that diversify our trade relationships, including with the EU.
- 4 The concluded FTA with the EU is squarely in line with the Government's efforts to promote trade diversification, our economic strategy for a high-wage, low-emissions economy that provides security in good times and bad, our broader Covid-19 Trade Recovery Strategy and efforts to recover from the effects of Cyclone Gabrielle, as well as helping to address rising costs of living for New Zealanders. The FTA will significantly improve access for exporters to the 27 Member States of the EU.¹
- 5 The FTA with the EU is one of our first that incorporates the Government's Trade for All Agenda. It includes outcomes that will provide new opportunities for small and medium sized enterprises (SMEs), women, Māori, and our regional communities, and includes ground-breaking outcomes on sustainable development issues.

Executive Summary

- 6 The NZ-EU FTA, once in force, will provide New Zealand preferential access to the European Union's market of 450 million consumers for the first time. Immediately on entry into force of the FTA, 91% of New Zealand's goods trade to the EU will be able to enter the EU duty free, allowing New Zealand businesses to better compete in our 4th largest export market, in which many of our key competitors already enjoy preferential access under existing trade agreements. Modelling suggests that the NZ-

¹ Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

EU FTA has the potential to grow New Zealand's real GDP by up to \$1.4 billion per year, and New Zealand exports to the EU by up to \$1.8 billion per year, by 2035².

- 7 Tariff savings from the FTA are estimated at \$100 million per annum immediately on entry into force, growing to \$110 million per year after seven years. Many key New Zealand exports (e.g. kiwifruit, onions and other horticulture, seafood, Mānuka honey, and wine) will be tariff-free from day one after entry into force. Other products (e.g. butter, cheese, beef) will continue to be subject to quotas, but with volumes and in-quota conditions that will enable a sizeable increase in trade, and the export of some products for the first time in years (though representatives from the dairy and beef sectors expressed frustration that the outcome in respect of those sectors was not more substantial). In some cases, the improved access will mean New Zealand could be poised to occupy a majority share of EU imports if this access is fully taken up (e.g. New Zealand quota volumes constitute 60% of current EU butter imports, and over 90% of current EU sheep meat imports).
- 8 The EU's services commitments to New Zealand are comparable to best outcomes in past EU FTAs, and include new commitments in areas of export interest to New Zealand (e.g. education services), alongside new New Zealand commitments to the EU in areas such as environmental services. The economic modelling suggests a reduction of between 10 - 20% in the overall costs faced by New Zealand service exporters into the EU. The EU has also committed to extend to New Zealand any future services and investment market opening agreed in subsequent FTAs through a 'most-favoured-nation' clause³ (a commitment New Zealand also made to the EU). As a result, any benefits the EU extends to future partners (e.g. Australia) in these areas will automatically be extended to New Zealand, future proofing the FTA outcomes.
- 9 The FTA contains ground-breaking commitments to promote trade and sustainable development (TSD), in line with New Zealand's Trade for All agenda. This includes strong outcomes on climate change, and trade and gender, that go beyond anything agreed in past FTAs. The EU has also agreed to commitments on fisheries subsidies and fossil fuel subsidy reform that go beyond past EU FTAs.
- 10 The NZ-EU FTA is not without costs, however. Like all of New Zealand's FTAs, this includes the loss of tariff revenue to New Zealand from duties on EU imports being removed. In the case of the EU, this will be around \$74 million per year from entry into force of the agreement. The FTA also includes modelled costs arising from an extension to terms for copyright, which could be up to \$15.4 million for literary works and sound recordings, along with additional costs in relation to films and artistic works.
- 11 Costs to New Zealand arising from the protection of new European Geographic Indications⁴ was forecast at up to \$22 million (though this figure may have increased

² ImpactECON LLC: Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: April 2022
<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Final-Report-Economic-Modelling.pdf>

³ Most-favoured nation is an obligation that requires New Zealand to treat European services providers no less favourably than it treat other foreign services providers, and vice versa, including if that treatment is the result of a future free trade agreement. This is important for New Zealand as it ensures the EU will provide our service providers with a similar level of treatment to that it gives to its current and future trade partners.

⁴ A geographical indication (GI) is an indication - usually a name like Champagne (France) - which identifies that a product comes from a particular area. It indicates that a product has a particular quality or characteristic that is associated with it coming from that geographic

slightly in the six years since the modelling⁵ was undertaken, but is not likely to be more than \$30 million). Most of the cost will fall on industry, however, it is likely to fall unevenly with smaller cheese producers, who may not take advantage of export opportunities arising out of the FTA, losing the ability to use names after a transition period (e.g. 'feta' nine years after the FTA comes into force).

- 12 Important policy areas of defensive sensitivity to New Zealand were secured and preserved. The FTA includes New Zealand's Treaty of Waitangi exception, which enables New Zealand to adopt policies it considers necessary to accord more favourable treatment for Māori. Negotiators secured bespoke outcomes in the NZ-EU FTA's Digital Trade chapter to respond appropriately to the Waitangi Tribunal's Wai 2522 decision.
- 13 The FTA preserves policy space for Government procurement policies to achieve social, labour and environment outcomes. Despite consistent pressure from the EU side, the FTA does not extend New Zealand's term of protection for patents and data exclusivity for pharmaceuticals, veterinary medicines or agricultural chemicals and does not require any changes to the Pharmac operating model or budget. The FTA does not include Investor-State Dispute Settlement (ISDS).
- 14 Negotiators significantly stepped up engagement and transparency processes with Te Tiriti/Treaty Partners throughout the negotiation and worked hard to ensure that the NZ-EU FTA contains outcomes that deliver for Māori. This included agreement, in the final stage of negotiations, to a Māori Trade and Economic Cooperation chapter which will provide a new platform for cooperation and engagement for Māori into the EU. Accelerated tariff elimination was secured in areas of particular importance for Māori (e.g. seafood, kiwifruit, Mānuka honey).
- 15 Post conclusion, and in line with the recommendations of the Trade for All Ministerial Advisory Board,⁶ the NZ-EU FTA has been subject to a greater level of scrutiny than any past New Zealand FTA. This has included on outcomes for Māori, for which ACE Consulting⁷, Te Taumata⁸ and Ngā Toki Whakarururanga⁹ have all produced analysis that informs the NIA. Māori views on the NZ-EU FTA are varied, as to be expected, with a range of perspectives about the FTA's outcomes, and around the process of negotiation and methods of engagement. These have been summarised in the NIA, which also includes links to the independent assessments.
- 16 If Cabinet agrees, then it is intended that the NZ-EU FTA will be signed in Brussels on 9 July. It is then expected that the FTA can undergo Parliamentary Treaty Examination over July-August before Parliament rises for the final time in late August. Legislation to give effect to the FTA's new commitments will need to be introduced and passed by New Zealand's Parliament before the FTA can be ratified and come into effect. Subject to the completion of legal requirements on both sides, for the EU, this includes approval by the European Parliament, expected in the last quarter of 2023, it is hoped that the NZ-EU FTA can come into effect within the

area.

⁵ <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-2017-Modelling-of-GI-costs.pdf>

⁶ <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf>

⁷ <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-An-Independent-Assessment-of-the-Impacts-for-Maori.pdf>

⁸ <https://tetaumata.com/nz-eu-fta-poised-to-deliver-for-maori/>

⁹ <https://static1.squarespace.com/static/62d0af606076367ebf83b878/t/6463471db83ddc54d78978dc/1684227873906/NZ+EU+FTA+ToW+Assessment.pdf>

second quarter of 2024, before the end of the term of the current European Commission.

Background and Analysis

- 17 The EU is one of New Zealand's closest and like-minded partners, with similar values across a wide range of issues, and an FTA has been a long-standing objective for successive New Zealand governments.
- 18 Conclusion of an NZ-EU FTA has established the basis for an even stronger trade and economic relationship, adding a vital piece of the architecture in the close relationship between the EU and New Zealand. The EU shares New Zealand's interest in upholding the rules based international order upon which we depend for our security and prosperity. It also reinforces our whakapapa connections to Europe, and provides additional opportunities to access innovation and technology from some of the world's most advanced economies.
- 19 Negotiations on an FTA with the EU took place over four years and were concluded on 30 June 2022. Mandates from Cabinet in 2017 [EGI-17-MIN-0212], 2019 [DEV-19-MIN-0073], 2020 [CAB-20-MIN-0231.01], and 2021 [DEV-21-MIN-0182] provided an appropriate basis for engagement. This was supplemented by a series of decisions from Delegated Ministers in June 2022 that allowed the FTA to be concluded.

Analysis

Key Benefits of the FTA for New Zealand

- 20 The EU is our fourth-largest trading partner, with two-way goods and services trade at around \$20.2 billion (2022). It is also our fourth-largest export market, with close to 450 million mostly high-income consumers.
- 21 Independent modelling work commissioned on the NZ-EU FTA, suggests an increase in the level of New Zealand's real GDP of up to \$1.4 billion per year by 2035 (as against a counter-factual with no FTA), with an extra \$1.8 billion in exports to the EU per year.
- 22 The EU-commissioned Sustainability Impact Assessment¹⁰, released in July 2021, also forecast increases to New Zealand's GDP from the NZ-EU FTA as being somewhere between NZ\$1.22 billion¹¹ to NZ\$2.2 billion¹² by 2030.¹³
- 23 s6(a)

¹⁰ https://trade.ec.europa.eu/doclib/docs/2021/july/tradoc_159746.pdf

¹¹ This lower-end figure, based on a conservative scenario, modelled tariff elimination on non-dairy and red meat exports and a small improvement in services non-tariff measures, but did not include any improvements to quotas for dairy and red meat – therefore underestimating the potential gains of the final agreement.

¹² This higher-end figure, based on an ambitious scenario, modelled the removal of all quotas on dairy and red meat – therefore overestimating the potential gains of the final agreement.

¹³ Based on New Zealand exports increasing by 10.2%, using New Zealand export figures to the EU for the year ending June 2020.

Goods market access

- 24 The EU is an important component of our long-standing objective of moving our exports from volume to value and our market diversification strategy, including for wine, horticultural products and meat, but also value-added high-end manufacturing and services. ^{s6(a)}

The share of our export markets now covered by FTAs will increase to 73.5% with the entry into force of the NZ-UK FTA followed by the NZ-EU FTA. Many of the sectors that will benefit from the NZ-EU FTA are based in regions facing a difficult recovery from the effects of Cyclone Gabrielle.

- 25 New Zealand secured strongly positive overall market access outcomes in the FTA, through which 91 percent of New Zealand's current trade into the EU will be tariff free from day one of the FTA entering into force, rising to 97 percent after 7 years. New Zealand exports to the EU will benefit from an estimated reduction in tariffs of \$100 million from day one, rising to \$110 million after seven years (by comparison, and reflecting the difference in size of the economies and trade flows, the NZ-UK FTA is estimated to deliver around \$37 million in tariff cuts from day one).
- 26 A significant issue for New Zealand exporters to the EU has been the lack of a level playing field. By way of practical example, New Zealand currently faces a tariff of 8%-8.8% on kiwifruit while our main competitor, Chile, enters tariff free. The FTA means that, at entry into force of the agreement, tariffs on kiwifruit will be removed. This represents an immediate tariff saving of an estimated \$45 million per year based on current trade levels.¹⁴ Tariff savings on other products, such as fish and seafood, industrial products, onions, wine and honey will add an estimated \$60 million per year at entry into force, growing to an additional \$70 million once the FTA is fully implemented.
- 27 In the case of seafood, the FTA will be significant in levelling the playing field for New Zealand exporters. At present Chile dominates EU mussel imports (nearly 80%). New Zealand accounts for less than 10% of EU imports. Chile benefits because it does not pay the 20% tariff. We expect that once this tariff is eliminated for New Zealand, we will immediately become more competitive in this high value market.
- 28 It is important to note the tariff savings described above almost certainly understate the quantum of the benefit from tariff removal. This is because they are based on existing export figures. Once tariffs are removed, we can expect an expansion of exports to the EU for many products – in part driven by diversification of New Zealand exports from other markets to secure these improved prices - delivering additional returns to our economy, employment, incomes and productivity.
- 29 The most difficult parts of the negotiation for New Zealand interests was in relation to securing outcomes on dairy and beef given these sectors are of the highest sensitivity for certain EU Member States, ^{s9(2)(g)(i)}

¹⁴ This is an increase on the estimated \$37 million of tariff savings per year for kiwifruit calculated based on 2017-2019 trade levels, which was the time period used for the calculation of the overall estimated tariff savings on total New Zealand exports of \$110 million per year.

^{s9(2)(g)}
⁽ⁱ⁾ Discussions with the EU were difficult, prolonged and went down to the wire of the final minutes of the negotiation.

- 30 In the case of dairy and beef, improvements in access through additional quotas and lower in-quota tariff rates (IQTR), and other improvements to administrative procedures, can be expected to deliver up to \$200 million per year in increased overall global export revenue for these industries, mostly through beef and butter¹⁵. The overall export revenue of these quotas, if filled, exceeds \$600 million per year, though much of this would likely be diverted from lower-value markets, rather than new production.
- 31 The beef and dairy outcomes represent a significant improvement on the status quo for New Zealand exporters into the EU, for example an eight-fold increase on our current beef access. That said, there is disappointment by some stakeholders that the outcomes secured were not more comprehensive. ^{s9(2)(d)}, ^{s9(2)(g)(i)}, ^{s9(2)(b)(ii)}
- 32 The dairy outcomes secured, when assessed in context of the EU's total dairy imports¹⁶ are of significance. New Zealand's post-FTA butter access (if utilised), for example, amounts to 60% of the EU's total butter imports, and would make New Zealand the second-largest supplier to the EU, behind the UK, if quota volumes are filled. New Zealand's post-FTA cheese access amounts to 15% of the EU's total cheese imports, and would make New Zealand the EU's third-largest supplier, after the UK and Switzerland, if quota volumes are filled.

Services and investment

- 33 This FTA is not, however, only about eliminating our competitive disadvantage in goods market access to the EU. The EU is one of the biggest investors in New Zealand¹⁷. It is also our third largest services trading partner, worth over \$3 billion in 2022. This FTA can therefore be expected to energise the services and investment relationship, including through the establishment of more predictable and liberal rules that match and in some places exceed the CPTPP benchmark. These processes help deliver productivity benefits, including through innovation, competition, knowledge transfers and sharing. The modelling analysis has suggested a significant cut of between 10-20% in the costs for New Zealand service exporters trading with the EU.
- 34 New Zealand secured new and improved access for education providers to offer a range of services, including language education services and recreational education services (including sports training). Importantly, this commitment applies to 20 of the 27 EU member states – a significant improvement on the existing levels of access

¹⁵ This figure is based on modelled increased total export values to the EU, while also accounting for the fact that the bulk of this export revenue increase will come from trade diverted from other markets owing to NZ production capacity constraints.

¹⁶ Based on the EU's average imports from 2017-21.

¹⁷ In 2021, the EU's stock of foreign direct investment (FDI) in New Zealand stood at NZ\$15.5 billion.

across these EU countries. In addition, the EU and New Zealand have agreed to include commitments on a broader range of aviation services, including ground handling services and services such as flight training and aerial spraying. In other areas of offensive interest to New Zealand, such as transport, private education, engineering, and professional services, the EU's offer will improve New Zealand service suppliers' access. Meanwhile New Zealand offered enhanced access to EU providers of environmental services.

- 35 New Zealand future-proofed its position in the EU market for trade in services and investment by agreeing that any commitments in services trade which the EU makes to future FTA partners will be automatically extended to New Zealand (and vice versa), a 'most-favoured nation' outcome. Importantly, Investor-State Dispute Settlement (ISDS) has also been excluded from this FTA. New Zealand has also increased the value of the Overseas Investment Act screening threshold to \$200m for EU investors (the same as for CPTPP partners, and China, Korea among others), which will facilitate greater flows of investment from the EU to New Zealand.
- 36 There are additional commitments in the FTA to facilitate the movement of business people between New Zealand and the EU, including around timely processes for visas, reasonable fees, and with an expanded range of categories of business people who can benefit (e.g. contractual service suppliers, though New Zealand reserved our right to continue to apply "economic needs test" for such professionals).

Digital Trade

- 37 The FTA will facilitate trade through digital means and promotes paperless trading, and the use of e-contracts, e-invoicing and e-authentication, while prohibiting the imposition of customs duties on electronic transmissions, and facilitating the free flow of data, with some important protections (e.g. for privacy of personal information, and public policy objectives covered by the general exceptions).
- 38 The FTA also responds substantively to the Waitangi Tribunal's "Wai 2522" report with negotiators securing a 'carve-out' from the digital obligations to allow the government to take measures to support Māori consistent with the Treaty of Waitangi.

s6(a), s9(2)(g)(i)

Trade and Sustainable Development

- 39 s6(a), s9(2)(g)(i)

This included a good outcome on fisheries subsidies disciplines, a first for the EU, and the EU's most progressive FTA outcome on harmful fossil fuel subsidies (both priorities for New Zealand). These complemented strong outcomes on illegal logging, conservation, biodiversity and the strongest commitments agreed in an FTA to promote women's economic empowerment. The European Commission has described the FTA as its "greenest". Chair of the European Parliament's International Trade Committee (INTA), Bernd Lange, said the TSD outcome was a "gold standard" for future FTAs.

- 40 The TSD chapter also includes ground-breaking commitments on climate change and the Paris Agreement, with the possibility of trade sanctions for non-compliance if

either Party were to, by act or omission, materially defeat the object and purpose of the Paris Agreement (alongside a similar possible sanction for breaches of fundamental labour rights). In line with New Zealand's preference, the FTA's dispute settlement mechanism applies across the TSD Chapter (including for gender, labour and environment elements), however the EU could only seek final recourse to trade sanctions as part of the dispute settlement mechanism for the above climate change-related commitment, and for possible breaches of ILO fundamental labour rights.

Public Procurement

- 41 The Public Procurement chapter will provide enhanced access to New Zealand businesses looking to contract in the EU's €2 trillion market. The new opportunities for New Zealand exporters include almost 200 additional central government entities across the EU's 27 Member States, giving New Zealand businesses access to the full coverage of the EU's central government entities, some health-related goods by the EU's regional contracting authorities, and coverage of entities operating in the fields of airport facilities and maritime, inland port or terminal facilities. Significant export opportunities are now available for high value-added specialist services and goods manufacturers, such as communications equipment, security systems, healthcare, and marine and aviation technology.

Māori Trade and Economic Cooperation

- 42 The EU in the final weeks of negotiations moved to accept New Zealand's proposal for a dedicated chapter on Māori Trade and Economic Cooperation. The chapter will operate as a platform to facilitate Māori engagement into the EU in respect to a range of possible areas including trade and investment, and research and innovation. The chapter has been well-received by most Māori, and in the EU. ^{s9(2)(b)(ii)}

Wine and Spirits Annex

- 43 In addition to achieving tariff-free access for wine immediately upon entry into force of the FTA, New Zealand was able to negotiate a trade-facilitating Wine and Spirits Annex. The Annex will reduce regulatory costs and increase certainty for New Zealand winemakers and spirits producers¹⁸.

Key Costs of the FTA for New Zealand

- 44 It should be noted that, despite New Zealand's already open economy, the NZ-EU FTA will lead to a reduction in tariffs paid on some imported EU products entering New Zealand. These include tariffs of 5-10% on imported footwear and apparel, plastics, textiles, pork, lifts, elevators and machinery. This should mean that these products become cheaper for New Zealanders and in this way the FTA further contributes to the Government's response to the cost of living crisis. Current forecasts based on a three-year average of tariff revenue (2020-2022) estimate an approximate \$74 million decrease in tariff revenue annually, up from \$53 million in the previous three-year period (2017-2019) due to increase imports from the EU post-Covid.

¹⁸ Outcomes include significantly increasing the number of winemaking practices our winemakers can use in line with New Zealand laws (as opposed to EU requirements) for wine exported to the EU, and widening the alcohol range New Zealand winemakers can use when labelling product as 'wine' in the EU.

- 45 Other outcomes agreed in the FTA include that four years after entry into force, copyright terms will be extended by 20 years (i.e. from the current life of the author plus 50 years, to life of the author plus 70). Economic modelling for literary work and sound recordings suggests a range of possible outcomes, from a net present cost of up to \$15.4 million to a small net positive impact. However, that modelling did not assess costs in relation to films and artistic works or the social cost of delaying access to older works¹⁹. This outcome has already been agreed in the UK FTA, but the commitment in the EU FTA brings the timeline forward to four years after entry into force (as opposed to fifteen years in the UK FTA).
- 46 The protection of geographical indications (GIs) was a key offensive interest of the EU in the FTA. New Zealand will provide an agreed level of protection for 1,976 EU GIs²⁰, allow for the protection of up to 30 additional GIs every three years, and meet certain border and administrative enforcement requirements. The GI obligations, and consequential legislative changes that are being proposed, are described in detail in Annex 2.
- 47 Modelling undertaken in 2017²¹ suggested the cost of the EU GI demands to be up to \$22.6 million (this is likely have increased in the intervening period, but is still likely to be below \$30 million). Most of this cost will be felt by producers, importers and exporters that currently use terms such as 'feta' and 'prosecco' but will have to relabel their products, and then compete with EU products in the New Zealand market that are able to continue to use such terms as GIs. For a number of businesses, including domestically focused producers such as specialist cheesemakers, these costs will not be directly offset by benefits from improved market access.
- 48 Negotiators secured some exceptions to EU GI protections to help mitigate costs. These included ensuring that existing users of the names 'gruyere' and 'parmesan' can continue to use those names indefinitely and users of other names that are currently being used in New Zealand will have 9 years (Port and Feta) or 5 years (Sherry, Madeira, Prosecco, Grappa, Gorgonzola, Bayerisches Bier and Münchener Bier) after entry into force of the agreement before the EU protections will apply.
- 49 The GI obligations are expected to impose some costs on Government. In particular:
- 49.1 the requirement for administrative enforcement of GIs. This will require a government agency being empowered to take action against anyone infringing a GI. The estimated initial costs are for six FTE equivalents, totalling \$915,000 per annum, however, costs should reduce over time as the market becomes familiar with the new protections. s9(2)(f)(iv), s9(2)(g)(i)

¹⁹ MBIE-commissioned research from 2020 estimated that the cost in present value terms would be between \$15 million in costs and a marginal benefit, with a "maximum net loss in welfare of \$13.7 million in the books sector and \$1.7 million for music sector" spread over the total copyright term. The authors of the report highlighted the difficulty in estimating the long run effects of copyright term extension, including because of changing consumption habits and limited data availability for certain types of works. The analysis found that less than 2 per cent of literary works and sound recordings retain any commercial value at the end of their current copyright term. The research did not address the cultural and social costs of delaying access to older works, particularly those that are no longer commercially available. These include, amongst other things, the opportunity costs of people not being able to access or make use of knowledge and culture contained in copyright works and the increased costs to the galleries, libraries, archives and museums (GLAM sector) in managing their collections.

²⁰ The EU has agreed to protect 23 of New Zealand's wine and spirits GIs, such as 'Marlborough' and 'Central Otago'.

²¹ <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-2017-Modelling-of-GI-costs.pdf>

baselines, and this will likely require a degree of reprioritisation as MPI is part of the Natural Resources Cluster and this is not an agreed exception to the cluster rules [CAB-22-MIN-0129 refers];

- 49.2 costs for the Intellectual Property Office of New Zealand (IPONZ, a business unit with MBIE) in establishing a new EU GIs register, estimated to be \$20,000, and which will be met from MBIE's baseline. The ongoing GIs register maintenance costs is estimated at \$10,000 per annum, which will be met through trade mark fees. Expanding the use of trade mark fees in this way will require amendment of the Trade Marks Act 2002;
- 49.3 ongoing operational costs to be met from MFAT and IPONZ baselines, including costs arising from provisions that allow each party to nominate up to 30 new GIs every three years for protection in the other party's territory. If in any three year period the EU makes 30 nominations, the costs to IPONZ from examining and running an opposition process for those nominations is estimated to be \$25,000 per year.
- 50 The FTA also requires that New Zealand "make all reasonable efforts" to join the Beijing Treaty on Audio-visual Performance (which addresses performers' rights in audio-visual recordings) and the Hague Agreement (which aims to simplify the international filing and registering of industrial designs). New Zealand is not bound to join either Treaty but must make reasonable efforts towards joining. This should include first undertaking a further assessment of the cost and benefit of membership of each Treaty. To reduce costs, that review could be undertaken as part of a wider of New Zealand copyright law alongside an assessment of copyright term and technological protection measures required under the FTA.

Maintaining New Zealand's Policy Space

- 51 An area of particular sensitivity for New Zealand, and which was a priority for the EU, concerned the extension of the term of protection for patents and data exclusivity for pharmaceuticals²², veterinary medicines, and agricultural chemicals. The EU pushed extremely hard on this issue and emphasised New Zealand was the only OECD member that had not enacted patent term extension. s6(a), s9(2)(d), s9(2)(g)(i)
- 52 New Zealand successfully resisted the EU's proposals for all of the above. s9(2)(g)(i)
- 53 It is important to note that other areas of policy importance or sensitivity were also protected. The NZ-EU FTA will:

²² s9(2)(b)(ii)

- 53.1 include the Treaty of Waitangi exception which ensures that the FTA will not prevent the Crown from meeting its obligations to Māori, New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement, and, in response to Wai 2522, builds on this through additional carve outs and safeguards for measures to protect Māori rights, interests, duties and responsibilities in digital trade;
 - 53.2 preserve the Government's right to regulate in relation to the policy priorities of interest to New Zealand, ensuring that future Governments will be able to continue to protect the environment and provide for public health care, public education and so on;
 - 53.3 preserve policy space for Government procurement policies to achieve social, labour and environment outcomes;
 - 53.4 preserve the current Pharmac model;
 - 53.5 exclude Investor-State Dispute Settlement (ISDS); and
 - 53.6 protect labour and environmental standards by ensuring these will not be lowered for a competitive advantage, will not be used as a barrier to access, and will contribute to our shared objectives on climate change and sustainable development.
- 54 Annex 1 provides more detail about the broader suite of outcomes secured in the NZ-EU FTA.

Next Steps and Implementation

- 55 In addition to seeking approval of the NZ-EU FTA outcomes and the accompanying NIA, this paper also seeks approval: 1) to sign the NZ-EU FTA; 2) to present the NZ-EU FTA and NIA to the House of Representatives for international treaty examination in accordance with Standing Order 405; 3) for the legislation required to implement New Zealand's obligations under the FTA; and 4) to instruct the Parliamentary Counsel Office to prepare the necessary implementing legislation.
- 56 If Cabinet approves the final outcomes and provides authority to sign the FTA, I intend to travel to Brussels with the Prime Minister so we can sign the FTA on 9 July (Brussels time), alongside my Trade counterpart from the European Commission, Executive Vice President Valdis Dombrovskis, and EU President Ursula von der Leyen.
- 57 The text of the NZ-EU FTA has been legally verified, and is attached in English as Annex 4. The EU has subsequently translated this document into its 23 other official languages. New Zealand officials have had the EU's translated French, German and Spanish versions fully verified by the Department of Internal Affairs (DIA) over recent months. Key components (e.g. goods obligations) of all other foreign language versions have also been verified by DIA.
- 58 The NZ-EU FTA will enter into force on a date to be agreed by New Zealand and the EU following each Party's written notification that their respective applicable legal requirements and procedures for entry into force have been completed. For the EU

this will include approval by the 705-Member European Parliament, expected in the last quarter of 2023, and a subsequent decision of the European Council, made up of Member State representatives, to ratify the FTA. The EU has expressed a keen interest in ratifying the NZ-EU FTA and bringing it into force in advance of EU Parliamentary elections, set for May 2024.

- 59 The impending end of the current New Zealand Parliamentary term, and our own elections, will interrupt the process to advance legislation to give effect to the FTA.
s9(2)(g)(i)

Legislative Implications

- 60 In order to bring the NZ-EU FTA into force, amendments to legislation are required to enable New Zealand to implement its obligations under the FTA. These include:
- 60.1 Amending regulations under the Tariff Act 1988 to enable the application of the preferential tariff rates agreed in the NZ-EU FTA, and to implement obligations relating to the tariff treatment of goods returned after repair or alteration;
 - 60.2 Amendments to the Tariff Act 1988 to provide for the NZ-EU FTA's bilateral safeguard mechanism under the Trade Remedies chapter;
 - 60.3 Amendments to the Dairy Industry Restructuring Act 2001 to bring additional and revised dairy quotas under the existing quota management system, and possible changes to the way in which dairy export quotas are allocated which may be desirable to maximise the new quotas from the FTA;
 - 60.4 Amending regulations to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules of origin for goods imported from the EU;
 - 60.5 Amendments to the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 to increase from NZ\$100 million to NZ\$200 million the monetary threshold for investments by EU non-government investors in "significant business assets" in New Zealand;
 - 60.6 Amendments to the Consumer Information Standards (Country of Origin (Clothing and Footwear) Labelling) Regulations 1992, to allow goods from a Member State of the European Union to be labelled as "Made in the EU" or, alternatively, as made in that Member State;
 - 60.7 Amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006 (GIs Act), to protect the EU GIs in New Zealand to the standard and subject to the enforcement measures set out in the FTA as described in Annex 2.

- 60.8 Amendments to the Trade Marks Act 2002 to clarify that consideration of GI rights under the Trade Marks Act includes consideration of the EU GIs registered under Part 3 of the GIs Register and to cover the costs ongoing costs of \$10,000 per annum for administering the expanded GI register.
- 61 These amendments will be given effect through the New Zealand-European Union Free Trade Agreement Legislation Bill, s9(2)(f)(iv)
- 62 Amendments to the Copyright Act 1994 to extend the term of copyright protection and expand the protection of technological protection mechanisms (digital locks) do not need to be implemented until four years after entry into force occurs. Cabinet has previously directed that there should be a review of the Copyright Act to ensure that the copyright regime remains fit for purpose in the context of a rapidly changing technological environment. Therefore, it is recommended that the required changes to copyright law not be implemented now, but as part of the review of the Copyright Act, with the scale and timeframes of that review to be determined at a later date.

Financial Implications

- 63 The financial implications are outlined in paragraphs 44-49 above and in the NIA Chapter 8, Annex 3 to this paper.
- 64 The cost to the New Zealand Government includes revenue foregone through the removal of tariffs on EU goods. As the New Zealand Customs Service will collect less revenue, this will have a corresponding impact on the operating balance and net core Crown debt²³ s9(2)(g)(i) Current forecasts based on a three-year average of tariff revenue (2020-2022) estimate an approximate \$74 million decrease in tariff revenue annually, up from \$53 million in the previous three-year period (2017-2019) due to increase imports from the EU post-Covid.
- 65 There are new outcomes in the NZ-EU FTA that will require an uptick in engagement from the New Zealand Government on matters related to the implementation of the FTA and the formulation of new bodies to assist this work, including a Civil Society Forum and a Domestic Advisory Group. There will also be a number of Committees that MFAT and other agencies will need to service once the FTA is in force. These costs will be met through baselines.

Impact Analysis

Regulatory Impact Statement

- 66 An extended NIA, attached as Annex 3, has been prepared in accordance with the necessary requirements for a regulatory impact analysis. The NIA sets out, amongst other things, the advantages and disadvantages of the FTA, costs and benefits, as well as policy changes from the NZ-EU FTA and what they mean for New Zealand. This

²³ The exact amount of revenue collected will be influenced by the pattern of actual imports and the proportion that qualifies for preferential access under the applicable rules of origin of the FTA.

includes a discrete impact analysis of the discretionary aspects of the legislative changes arising from the implementation of the GI obligations.

- 67 The Treasury's Regulatory Impact Analysis team has determined that the proposal to implement New Zealand's obligations in relation to the Geographical Indications (Wine and Spirits) Registration Act 2006 (the GI Act) is exempt from the requirement to provide a Regulatory Impact Statement (RIS). This exemption is granted on the grounds that the government has limited statutory decision making discretion or responsibility for the content of the proposed delegated legislation (as it is the minimum necessary to comply with our new obligations).
- 68 The government has some flexibility as to how to implement the enhanced enforcement framework for Geographical Indications. The Treasury has exempted these changes from the need to provide a separate RIS on the grounds that the relevant issues have been addressed in the extended National Interest Analysis.

Population implications

- 69 The FTA is expected to lead to a modest but broad-based increase in wages across the labour market, with resulting improvements to incomes and consumption spending across many households. These benefits are expected to be larger for agricultural and low-skilled workers due to market access improvements for primary sector exports, and in regional communities such as in the Hawke's Bay, Wairarapa, Marlborough, Southland, and Otago that sell a higher share of their exports to the EU.
- 70 Employment gains for Māori may be slightly higher than for other population groups, as the largest export gains are expected to come from the agriculture and food sector where Māori are well represented. Women are also expected to benefit from broad-based wage growth and consumption. Although female employment in primary export industries is lower than men, trade and gender outcomes agreed through the FTA will assist in promoting women's involvement in trade as part of overall efforts to support women's economic empowerment. Population implications, including regional impacts, impacts of Māori, women and SMEs, are addressed in the annexed NIA Chapter 7.

Human Rights

- 71 There are no inconsistencies in this proposal with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

Consultation and Engagement

- 72 There has been a long and active series of Treaty partner and stakeholder engagement and consultation, both preceding the launch of FTA negotiations with the EU, and through the period of negotiations, reflecting that this was the first FTA commenced under the Government's Trade for All agenda.
- 73 This included regular hui (in-person or virtually) with Treaty partner representative groups (e.g. Te Taumata, Federation of Māori Authorities (FOMA), Ngā Toki Whakarururanga, and the National Iwi Chairs Forum, amongst others). These engagements were supplemented by research commissioned to better understand

Māori interests in our trade engagement with the EU, encompassing Geographical Indications and the broader trade relationship.

- 74 Public stakeholder sessions on the NZ-EU FTA were held regularly over the course of negotiations. Public summaries of each negotiation round were also made available on the MFAT website (including in Te Reo for the final year of discussions over 2021/22). Video-blogs of the New Zealand Chief Negotiator were also made available and MFAT's NZ-EU FTA webpage provided other information related to the FTA. A stand-alone email address (eu-fta@mfat.govt.nz) was set-up and monitored
- 75 Negotiators also looked to build improvements into the NZ-EU FTA process to increase transparency and enable more useful engagement with Treaty partners and stakeholders on the FTA. For the first time, and with the EU's agreement and under cover of confidentiality agreements, live negotiation text was shared with Te Taumata and Ngā Toki Whakarururanga. This was of particular relevance for evolving discussions on goods market access, digital trade, services and investment and the Māori Trade and Economic Cooperation chapter.
- 76 Stakeholders, including the New Zealand Council of Trade Unions (CTU) and Business New Zealand, received bespoke, detailed, regular and confidential trade policy briefings. Negotiators consulted extensively with a range of business and exporters as the FTA progressed, including horticulture, seafood, wine, dairy, red meat, seafood and manufacturing representatives, across a wide range of different issues such as rules of origin and goods market access.
- 77 After negotiations concluded on 30 June 2022, a number of FTA information notes were made available on MFAT's website to inform the public about the FTA outcomes. Copies of the report on the CGE economic modelling prepared for the FTA, and the modelling prepared with respect to the EU's GI proposals, were also made available online.
- 78 In line with the recommendations of the Trade for All Ministerial Advisory Board²⁴, and recommendation 9 in particular, the NZ-EU FTA has been subject to an extra level of scrutiny after the FTA was concluded. This has included further analysis on outcomes for Māori, for which ACE Consulting, Te Taumata and Ngā Toki Whakarururanga have all prepared separate reports that will inform the NIA. Māori views on the NZ-EU FTA, as reflected in these reports, are varied, as to be expected.
- 79 ACE Consulting prepared a report on the NZ-EU FTA entitled '*Ūropi Tauhokohoko Ka Taea New Zealand – European Union Free Trade Agreement: An Independent Assessment of the Impacts for Māori*'. The report modelled \$110 million in benefits for the Māori economy arising from the NZ-EU FTA. ACE concluded "Negotiations were approached with a view to ensuring that the Crown's obligations to Māori under Te Tiriti o Waitangi were upheld, and that outcomes for Māori were apparent in the NZ-EU FTA" and noted "a degree of trust and respect from Treaty partners and negotiators was evident". ACE did flag concerns expressed by some Māori about the process and outcomes of the NZ-EU FTA, including protection for mātauranga Māori, Treaty rights and interests and cultural and intellectual property of Māori.

²⁴ <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf>

- 80 Te Taumata's *'EU FTA Analysis – An assessment of what the EU FTA delivers, or could deliver, for Māori'* concluded that the EU FTA "doesn't necessarily contain all Māori hoped for" but has made "a reasonable attempt to consider the potential impact on Māori cultural and economic interests". The NZ-EU FTA is assessed to "potentially provide significant economic benefits to Māori and preserve matters of tikanga, mātauranga and advance tino rangitiratanga in its own way".
- 81 Ngā Toki Whakarururanga's *'Te Tiriti O Waitangi Assessment –New Zealand European Union Free Trade Agreement'* acknowledged that the Crown has "made some positive changes to past practice and agreements" but "there are also some backwards steps in this FTA". The Crown was still seen, however, to have "a long way to go to satisfy their obligations under Te Tiriti o Waitangi". Ngā Toki Whakarururanga was positive about the lack of ISDS in the FTA, and the "major gains on digital trade protections" which reflected that MFAT took the Waitangi Tribunal's third and final Wai 2522 report "seriously".
- 82 One area in which Māori feedback was consistent was on the importance of meaningful implementation of the FTA and engagement with Māori on matters of interest to Māori. Resourcing was important to facilitate that engagement, including in respect to chapters with a cooperative focus.
- 83 Officials also engaged with the CTU on the "Trade for All" analysis in the NIA. CTU acknowledged the inclusion of deeper distributional analysis, including impacts for wages, sectors, regions, and population groups. It expressed a desire for future NIAs to consider in more detail expected gains across incomes, for labour vis-à-vis the owners of capital, and complementary policy levers required to unlock the potential of FTAs, including to achieve a high-wage, low-emissions economy.
- 84 A fuller read-out of these reports and the broader consultation and engagement process followed for the NZ-EU FTA is included in Chapter 10 of the NIA.
- 85 The Treasury, Ministry for Business, Innovation and Employment, Ministry for Primary Industries, New Zealand Customs Service, New Zealand Trade and Enterprise, Ministry for Culture and Heritage, Ministry for Women, Te Puni Kōkiri, Ministry of Transport, the Commerce Commission, Inland Revenue, the National Cyber Security Centre, the Department of Internal Affairs, Stats NZ, Ministry of Education, Ministry of Social Development, Ministry for the Environment, Department of Conservation, the Ministry of Health, the Reserve Bank, and the Department of Prime Minister and Cabinet have been consulted on this paper.

Communications

- 86 Refreshed and new communication material is being prepared for release at signature, supplementing the existing material that outlines the key outcomes of the NZ-EU FTA currently available on the website of the Ministry of Foreign Affairs and Trade.
- 87 An inter-agency process will be stood up after signature, and before entry into force in 2024, to ensure information about the FTA and its outcomes continues to be effectively communicated to Māori, business, civil society and other stakeholders.

Proactive Release

- 88 This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet with redactions where necessary e.g. to protect New Zealand's leverage in other FTA negotiations.

Recommendations

The Minister for Trade and Export Growth recommends that the Committee:

- 1 **note** that negotiations for a *Free Trade Agreement between New Zealand and the European Union* took place over four years and were concluded on 30 June 2022;
- 2 **note** that outcomes from the FTA were within mandates from Cabinet were provided in 2017 [EGI-17-MIN-0212], 2019 [DEV-19-MIN-0073], 2020 [CAB-20-MIN-0231.01], and 2021 [DEV-21-MIN-0182] and on a limited range of additional issues by Delegated Ministers in June 2022;
- 3 **note** that that economic modelling on the NZ-EU FTA suggests that New Zealand's economy will benefit from the FTA through an increase to GDP of up to \$1.4 billion and exports to the EU of up to \$1.8 billion, per year, by 2035;
- 4 **note** that the NZ-EU FTA preserved New Zealand policy space in key areas of defensive interest, in particular:
 - 4.1 includes the Treaty of Waitangi exception which ensures that the FTA will not prevent the Crown from meeting its obligations to Māori and New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement, and, in response to Wai 2522, builds on this through additional carve outs for measures to protect Māori rights, interests, duties and responsibilities in digital trade, and trade enabled by electronic means;
 - 4.2 preserves the Government's right to regulate, ensuring that future Governments will be able to continue to protect the environment, public health care, public education and so on;
 - 4.3 does not involve any changes to the Pharmac model;
 - 4.4 for Government procurement policies to achieve social, labour and environment outcomes;
 - 4.5 does not lower labour or environmental standards and will in fact contribute to strengthening our shared objectives on climate change and sustainable development more generally; and
 - 4.6 excludes Investor-State Dispute Settlement (ISDS).
- 5 **note** that the NZ-EU FTA will incur some additional costs for New Zealand, including:

- 5.1 foregone tariff revenue estimated at \$74 million, per year due the removal of tariffs on imports from the EU, which will have a corresponding impact on the operating balance and net core Crown debt;
- 5.1.1 agree to delegate decision making on the fiscal management treatment of this expenditure to the Minister of Finance;
- 5.2 costs associated with the extension of term of copyright by 20 years estimated at up to \$15.4 million for literary works and sound recordings, plus potential costs for artistic works and social costs from further limiting access to copyright works within four years of the FTA entering into force (which will accrue in advance of UK FTA commitments owing to a shorter transition period);
- 5.3 total costs to producers, importers and exporters estimated at up to \$30 million arising from the outcome agreed in the NZ-EU FTA to protect certain EU “geographical indications”;
- 5.4 ongoing costs of \$10,000 per year for IPONZ to maintain an expanded register be met from trade mark fees recovery;
- 5.5 up to \$25,000 per year to consider and register new EU GI nominations, and costs equivalent to an estimated 6 FTEs, totalling \$915,000 per annum, to cover administrative enforcement of geographic indications, though it is expected that the cost of administrative enforcement will reduce over time.
s9(2)(f)(iv), s9(2)(g)(i)
- 5.6 various other administrative and compliance costs associated with commitments under the NZ-EU FTA (e.g. servicing FTA committees) which would be met from baseline funding.
- 6 **note** the NZ-EU FTA has been negotiated throughout with increased and active engagement with Māori, significantly stepped up engagement with other stakeholders, including the Council of Trade Unions, and an unprecedented level of transparency with respect to the negotiating text, and independent analysis of the final outcomes, both in respect to Māori, and more broadly;
- 7 **note** post-conclusion analysis of the final outcomes of the NZ-EU FTA for Māori are varied, as would be expected, with most Te Tiriti/Treaty partners MFAT engages overall positive about the FTA, while some others are more critical;
- 8 **approve** the text of the *Free Trade Agreement between New Zealand and the European Union* (attached as Annex 4) and the content of the National Interest Analysis (attached as Annex 3) subject to any minor or technical changes arising from the final legal review of the 24 language versions of the NZ-EU FTA;
- 9 **authorise** the Minister for Trade and Export Growth, in consultation with relevant portfolio Ministers where appropriate, to approve any changes to the text of the *Free Trade Agreement between New Zealand and the European Union* or the National

Interest Analysis which do not materially alter their content between now and public release at signature;

- 10 **authorise** signature of the *Free Trade Agreement between New Zealand and the European Union*;
- 11 **note** that it is intended that the European Commission and New Zealand sign the FTA in Brussels on 9 July;
- 12 **agree** that the National Interest Analysis be released after signature and published on the Ministry of Foreign Affairs and Trade website, consistent with regular and established practice;
- 13 **agree**, following signature, to present the text of the *Free Trade Agreement between New Zealand and the European Union* and the National Interest Analysis to the House of Representatives, for the purposes of international treaty examination, in accordance with Standing Order 405;
- 14 **note** that to implement New Zealand's obligations under the FTA will require amendments to the specified legislation set out in this paper from paragraph 60 of this paper;
- 15 **agree** that legislative amendments necessary to comply with obligations relating to Geographic Indications in the FTA as set out in attached Annex 2 will be given effect through the New Zealand-European Free Trade Agreement Legislation Bill;
- 16 **agree** that all other legislative amendments necessary to comply with obligations in the FTA will be given effect through the New Zealand-European Union Free Trade Agreement Legislation Bill;
- 17 s9(2)(f)(iv)
- 18 **invite** the Minister for Trade and Export Growth, the Minister of Commerce and Consumer Affairs, and relevant portfolio Ministers including but not limited to the Minister of Agriculture, to issue drafting instructions to the Parliamentary Counsel Office to draft the New Zealand-European Union Free Trade Agreement Legislation Bill to give effect to the *Free Trade Agreement between New Zealand and the European Union*;
- 19 **authorise** the Minister for Trade and Export Growth, the Minister of Commerce and Consumer Affairs, and relevant portfolio Ministers including but not limited to the Minister of Agriculture, to make any subsequent policy decisions consistent with this paper to facilitate the drafting of legislation;
- 20 s9(2)(f)(iv)
- 21 **note** that the *Free Trade Agreement between New Zealand and the European Union* will enter into force on such date as the Parties may agree in writing, once both

Parties confirm completion of their respective applicable legal procedures for entry into force, and that both sides are working towards the FTA entering into force by May 2024 if possible;

- 22 **note** that financial costs to implement the *Free Trade Agreement between New Zealand and the European Union* will be met from the baselines of the relevant agencies, including Vote Foreign Affairs, Vote Agriculture, Biosecurity, Fisheries and Food Safety, and Vote Business, Science and Innovation with the exception that the ongoing \$10,000 annual cost of maintaining the GI register will be met from cost recovery of trade mark fees;
- 23 **agree** that the required changes to copyright law not be implemented now, but as part of the review of the Copyright Act, with the scale and timeframes of that review to be determined in 2024.

Authorised for lodgement

Hon Damien O'Connor

Minister for Trade and Export Growth

ANNEX 1: OVERVIEW OF KEY NZ-EU FTA OUTCOMES BY CHAPTER

FTA Chapter	Key Outcomes
<p>Chapter 2 –</p> <p>Trade in Goods /</p> <p>Tariff Schedules</p>	<ul style="list-style-type: none"> 91% of New Zealand’s existing goods trade to the EU (pre-COVID 2017-2019 average) will face no tariffs from entry into force of the Agreement: <ul style="list-style-type: none"> 67% will be subject to tariff elimination on entry into force of the FTA (benefitting a range of New Zealand’s commercial interests, particularly sectors which already trade in high volumes into the UK despite tariff barriers, such as horticulture, seafood, industrial products, and wine and honey), plus 24% through existing WTO duty-free quota access (sheep meat). Tariffs on a further 6% of existing trade will be progressively removed over 3, 5 or 7 years after entry into force, meaning 97% of existing trade will face no tariffs once the agreement is fully implemented. Tariff savings will exceed \$100 million per year immediately on entry into force of the FTA, rising to \$110 million after 7 years, based on existing trade levels. Tariff savings will have increased since that time because there has been a 4.6% increase in EU goods imports from New Zealand over the subsequent three-year period (i.e. 2020-2022). The FTA also provides significantly improved access for beef (quota access eight times larger than existing volumes, and at a significantly in-quota lower tariff) and dairy products such as butter and cheese (through fundamental improvements to quota access, which if filled, will see New Zealand with the second-highest share of the EU market for butter (behind the UK), and the third-highest for cheese (behind the UK and Switzerland) once fully implemented. Export revenue from these quotas, if filled, will exceed \$600 million at current prices, mostly diverted from other markets. Overall, the FTA will level the playing field, enabling New Zealand exporters to compete on equal terms with other exporters for the first time across almost all products. The FTA is projected to increase New Zealand exports to the EU by \$1.8 billion per year, with overall GDP increasing by \$1.4 billion, once fully implemented. Tariffs on New Zealand’s imports from the EU will all be eliminated at entry into force, liberalising the 5-10% tariffs that can apply to EU goods not eligible for tariff concessions. This should make such products imported from the EU marginally cheaper for New Zealand consumers, removing tariffs approximately \$74 million in import duties per year. <p>The Goods chapter of the FTA, drawing on similar outcomes secured in New Zealand’s other FTAs, prevents the use of several trade restrictive practices bilaterally (such as export duties) and also includes a number of transparency obligations</p>

	<p>for goods-related trade procedures. It sets out trade-facilitative rules for technical goods trade issues such as temporary admission of goods and re-entry of goods exported for repair or alteration. New Zealand also agreed to allow for the origin of goods to be marked as “Made in the EU”. Mechanisms are also created for Parties to raise and resolve concerns relating to any measures affecting goods trade, and to share data on tariff preference utilisation, which will assist in ensuring the benefits of the FTA are maximised.</p>
<p>Chapter 3 – Rules of Origin</p>	<ul style="list-style-type: none"> • The Rules of Origin (RoO) chapter establishes rules to determine whether goods traded between the New Zealand and the European Union are considered to “originate” in either New Zealand or the Union and therefore qualify for relevant tariff preferences. • The rules are designed on the standard basis: goods will be considered originating if they are wholly obtained, produced exclusively from originating materials or meet the relevant product specific rule when non-originating materials are used in production. • Special origin quota arrangements have been negotiated for certain products where it was felt that the rules of origin may be too restrictive for New Zealand industries: <ul style="list-style-type: none"> - 14,000 tonnes per annum for certain fish that are caught on fishing vessels under demise charter; - EUR 562,000 per annum for laminated fabric of heading 5903 (under a change in tariff heading rule) - EUR 1.2 million (for garments classified in HS Chapter 61) and EUR 1 million (for garments classified in HS Chapter 62) under a ‘cut-and-sew’ rule. <p>These quotas will be managed on a first-come first-served basis and may be reviewed, on request, after three years.</p> • Attesting to the origin of the goods can be done through a self-declaration by the exporter, or on the basis of the importer’s knowledge. Those making such declarations must have, or have access to, supporting documentary evidence that can be supplied on request.
<p>Chapter 4 – Customs Procedures and Trade Facilitation</p>	<ul style="list-style-type: none"> • The chapter on customs procedures and trade facilitation is focused on ensuring efficient clearance for traders, including through efforts to minimise the documentation required for release of goods, enable electronic submission and processing of documents prior to arrival of goods and a commitment to prompt release of goods (upon arrival – to the extent possible).

	<ul style="list-style-type: none">• The chapter also includes specific provisions for perishable goods, enabling release upon arrival, to the extent possible, and giving perishable goods appropriate priority when scheduling and conducting examinations, if such an examination is required.• Specific provisions are included to ensure the consistent application of customs procedures and processes increasing certainty for traders. There are also enhanced publication provisions intended to increase transparency and predictability.• The chapter includes a requirement to establish or maintain a partnership programme for ‘authorised economic operators’, that will enable them to benefit from quicker and more streamlined processing.• Provision is also made for traders to be able to apply for advance rulings on questions of origin, classification and, if the Party’s domestic legislation allows, customs valuation methodology. Advance rulings should usually be provided within 150 days.
Chapter 5 – Trade Remedies	<p>This chapter:</p> <ul style="list-style-type: none">• Sets out the circumstances and obligations under which a Party may take steps to protect domestic industry. , for example in the case of unfair competition or an unexpected surge in imports.• Reaffirms the rights and obligations that each Party retains under relevant WTO agreements.• This includes a general injury-based bilateral safeguard measure that a Party can temporarily apply to a customs duty to address a threat of or actual injury to domestic industry as a result of a surge in imports.• New Zealand has also agreed to an additional safeguard measure that applies to the EU’s outermost regions (such as the Canary Islands) with a lower threshold of ‘serious deterioration’.
Chapter 6 – Sanitary and Phytosanitary Measures	<p>This chapter:</p> <ul style="list-style-type: none">• reaffirms the Sanitary Agreement New Zealand has with the EU, and consequently focuses on processed food, plants, and plant products. It also reaffirms, and where relevant builds on, the rights and obligations under the WTO SPS Agreement.• provides for co-operation in the multilateral standard setting environment and seeks enhanced cooperation on antimicrobial resistance.• recognises the Parties common objectives in the area of antimicrobial resistance and acknowledges the Parties respective antimicrobial regulatory standards, guidelines and surveillance systems deliver comparable controls and

	<p>health outcomes.</p> <ul style="list-style-type: none"> • confirms the Parties will accept each other's determinations regarding Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites. • confirms the Parties will accept the SPS inspection and verification controls applied for trade within the territory of the exporting party, and each other's establishment lists that are subject to SPS measures for trade. Official food safety certification for processed foods will only be required if it is justified by a risk analysis. • The FTA's dispute settlement mechanism applies to this Chapter and to the NZ-EU Sanitary agreement.
<p>Chapter 7 –</p> <p>Sustainable Food Systems</p>	<ul style="list-style-type: none"> • This Chapter provides for provides for cooperation between the EU and New Zealand on Sustainable Food Systems (SFS). It establishes a committee for government – government cooperation on issues spanning the food system with the aim of working together across the economic, environmental, social, and cultural bases to improve food security and nutrition for future generations. • The Chapter reflects the ambition which both New Zealand and the European Union have for transitioning to more sustainable food systems globally and is the first chapter of its kind for both Parties. Envisaged cooperation includes exchanging information, sharing expertise, joint research, and cooperating bilaterally and in international fora. • Specific cooperation areas will be agreed between the Parties, although the Chapter signals that this could include food production methods and practices; the environmental and climate impacts of food production; food loss and waste; policies and measures which cause environmental harm; and indigenous knowledge, participation, and leadership in food systems – amongst others. • The SFS Committee will establish an annual working plan and has the discretion to establish expert-level working groups to identify and address issues arising from the application of the Chapter.
<p>Chapter 8 –</p> <p>Animal Welfare</p>	<p>This chapter:</p> <ul style="list-style-type: none"> • recognises both Parties' commitment to high standards of animal welfare as well as providing for ongoing bilateral cooperation and exchanges on animal welfare matters. • acknowledges the Parties' existing animal welfare standards and associated systems provide comparable animal welfare outcomes. • provides for co-operation in relevant international bodies and multilateral standard setting and acknowledges that both

	<p>Parties will continue to evolve and base their standards on science.</p> <ul style="list-style-type: none">• is subject to the dispute settlement chapter.
Chapter 9 – Technical Barriers to Trade (TBT)	<ul style="list-style-type: none">• The objective of the TBT chapter is to facilitate two-way trade in goods as well as enhancing cooperation between the EU and New Zealand.• The chapter builds on the WTO TBT Agreement through commitments on good regulatory practice in the development and review of technical regulations, and establishing mechanisms to foster collaboration on areas of mutual interest in order to address technical barriers to trade. It also provides for the exchange of information on market surveillance, safety and compliance of non-food products. This includes the option to exchange selected information on consumer products.• In line with New Zealand’s policy on prohibiting animal testing, the chapter endorses the approach and commits both Parties to work together to actively support and promote research, development and alternative methods to animal testing.
TBT: Wine and Distilled Spirits Annex	<ul style="list-style-type: none">• New Zealand and the EU have committed to a Wine and Spirits annex to facilitate trade in wine and spirits produced in each of their territories. This will benefit New Zealand winemakers as the EU remains an important market for New Zealand wine and will provide improved certainty for our small but growing spirits industry.• The outcomes agreed in the Wine and Spirits Annex can be accommodated under New Zealand’s current laws and are consistent with current policy settings. They are broadly in line with New Zealand’s relevant obligations under existing FTAs such as CPTPP, as well as wine specific Agreements and Protocols New Zealand is a Party to in the in the World Wine Trade Group (WWTG).• Necessary policy space remains safeguarded. For example, Parties retain the right to implement measures necessary to protect human or plant life or health and it is confirmed that importing party’s rules apply unless specified otherwise in the annex. Where the negotiated outcome restricts policy space over and above what has been agreed in other international agreements (e.g. in relation to date marking) this has been done in consultation with and with the agreement of agencies who have the relevant policy administration responsibilities.• The advantages of the Wine and Spirits Annex for New Zealand include:<ul style="list-style-type: none">○ significantly increasing the number of winemaking practices and physical winemaking processes our winemakers can use in line with New Zealand laws and requirements (as opposed to EU requirements) for wine exported to the EU. This will improve access conditions and increase flexibility for winemakers who

	<p>often produce to the most stringent rules in order to have wider market choices;</p> <ul style="list-style-type: none">○ agreeing a process for adding new items to the list of permitted winemaking practices when agreed by both Parties;○ widening the alcohol range our winemakers can use when labelling their product as ‘wine’ in the EU (7% actual to 20% total alcoholic strength) compared to the current range of 8.5% actual to 15% total alcoholic strength as regulated in the EU. This increases flexibility and enables access of a wider proportion of New Zealand wines that can be sold in the EU labelled as ‘wine’;○ improving certainty for winemakers in relation to label design by including general labelling principles and by providing for a standstill on new precise placement requirements for mandatory information;○ improving winemakers’ flexibility in relation to label design including in relation to alcohol content representation on the label and by aligning multi-variety labelling rules with existing New Zealand domestic requirements for New Zealand wine (the 85% rule);○ reducing the costs arising from routine certification requirements entering the EU market by agreeing a simplified regime for New Zealand’s bottled wine exports. Bulk wine will remain subject to existing full certificate requirements; and○ improving certainty for spirits producers on certain labelling provisions. For example, the Annex clarifies that certain types of date marking are not required on spirits labels.
TBT: Motor Vehicles Annex	<ul style="list-style-type: none">• The Motor Vehicles and Equipment Annex aims to prevent unnecessary technical barriers to trade by promoting compatibility and convergence of regulation based on international standards, while protecting human health, safety, the environment and the transport infrastructure.• The commitments in the Annex around the convergence of regulatory requirements and market access should facilitate trade in motor vehicles and equipment. The Annex also provides for cooperation and the exchange of information between the Parties.

Chapter 10 – Investment Liberalisation	<ul style="list-style-type: none">• The Investment Liberalisation Section of Chapter 10 creates a high quality and balanced framework on investment obligations to govern the investment relationship between New Zealand and the EU. The section will facilitate the flow of investment within a stable and transparent framework of rules.• The Investment Section does not include Investor-State Dispute-Settlement (ISDS), consistent with New Zealand Government policy.• The Section consists of substantive “reservable” obligations such as National Treatment (non-discrimination between foreign and domestic investors), Most-Favoured-Nation (non-discrimination between different foreign investors), and prohibition of performance requirements (providing investors with control over their investment by preventing placing requirements on investors such as using only domestic goods and services).• A number of sectors are carved out of the Chapter, including services provided in the exercise of governmental authority, certain air transport services, audio-visual services, and government procurement. The Chapter includes market access schedules where both Parties retain policy space with respect to identified areas in relation to “reservable” disciplines set out above. This means that for New Zealand, for example, the Overseas Investment Act and New Zealand’s public healthcare and education sectors are excluded from many obligations contained within the Investment Section.• The Investment Section and the commitments made by the EU will provide greater certainty and facilitate the flow of investment into the EU for New Zealand investors.• New Zealand’s commitments to the EU are broadly in line with what has been offered under CPTPP and the UK FTA, and accordingly the value of the Overseas Investment Act screening threshold has been increased to \$200m for EU investors to facilitate greater flows of investment from the EU to New Zealand. New Zealand has included a new reservation to preserve the Government’s right to actively protect and promote Māori rights and interests in respect to trade enabled by electronic means. This reservation was developed in response to the WAI2522 finding where the Crown was found to be in breach of its obligations to actively protect Māori interests in the CPTPP digital provisions, and with input from Māori, including Ngā Toki Whakarururanga. The reservation secures policy space for New Zealand to implement measures that protect or promote Māori interests or rights, and operates in addition to the existing Treaty of Waitangi exception, providing further clarification of the Government’s active protection of Māori within the trade in services and investment space.
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<p>Chapter 10 –</p> <p>Cross-Border Trade</p> <p>in Services</p>	<ul style="list-style-type: none">• Cross-Border Trade in Services seek to facilitate the expansion of services trade in a number of sectors of interest to New Zealand, including professional and business services, environmental services, educational services and transport services, as well as services that support New Zealand’s goods trade with the EU. According to the ImpactECON assessment for the NZ-EU FTA, the costs of trading into the EU for New Zealand service exporters are projected to reduce by between 10% and 20%.• This Section consists of substantive obligations, such as National Treatment, which prevents unfavourable discrimination between foreign and domestic service providers, and Most-Favoured-Nation (MFN) treatment which prevents unfavourable discrimination between different foreign providers, and Local Presence, which prohibits requirements that New Zealand service providers physically establish their operations in EU territory (and vice versa).• A number of sectors are carved out of the Chapter, including services provided in the exercise of governmental authority, certain air transport services, audio-visual services, and government procurement. In addition, our market access schedules set out which sectors remain protected from some or all of the substantive obligations set out above. For example, New Zealand’s public healthcare and education sectors are excluded from many of the obligations set out in the Investment Liberalisation and Trade in Services Chapter.• The EU has made a number of commitments that will benefit New Zealand service providers – allowing them to identify new opportunities in the EU market and increase their competitiveness and profitability. This is particularly the case for services providers active in sectors or sub-sectors where the EU’s commitments go beyond those made in its WTO GATS schedule. These include areas such as language education services and aviation services (including ground handling services and services such as aerial firefighting, flight training, aerial spraying and other airborne agricultural, industrial and inspection services).• New Zealand has offered the EU new commitments on environmental services beyond those offered to existing FTA partners, as well as commitments similar to those made in the UK FTA and CPTPP. New Zealand has also included a reservation to preserve the government’s right to actively protect and promote Māori rights and interests in respect to trade enabled by electronic means. This reservation was developed in response to the WAI2522 finding where the Crown was found to be in breach of its obligations to actively protect Māori interests in the CPTPP digital provisions, and with input from Māori, including Ngā Toki Whakarururanga. The reservation secures policy space for New Zealand to implement measures that protect or promote Māori interests or rights, and operates in addition to the existing Treaty of Waitangi exception, providing further clarification of the Government’s active protection of Māori within the trade in services and investment space.• More generally, given the EU’s prominence as a global services exporter, we can expect the certainty provided by New Zealand’s services market access commitments in the FTA to increase the attractiveness of New Zealand for EU services exporters despite our comparatively small market, thereby increasing opportunities for knowledge and technology transfer.
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<p>Chapter 10 – Temporary Entry of Business Persons</p>	<ul style="list-style-type: none"> • The Entry and Temporary Stay of Natural Persons Section of Chapter 10 seeks to facilitate the entry and temporary stay of business people. New Zealanders travelling to the EU for business purposes will benefit from the commitments in this Section, which operate to ensure expeditious and transparent application procedures for obtaining visas. This includes a commitment that any fees charged for any immigration formality (e.g. visas) will be reasonable and will not unduly impair or delay the business activities of those applying for temporary entry. • New Zealand and the EU have agreed they will not set any numerical limits on the total number of individuals in each category of business people to be granted temporary entry, and both sides have made commitments to provide temporary entry to each other's business persons across an expanded range of categories including contractual service suppliers, and independent professionals. • Similarly, neither Party will impose 'economic needs tests' (a test to confirm if the skills sought can be found within the market) on the temporary entry of business persons, other than those clearly set out in their schedules of commitments. In the case of New Zealand, consistent with New Zealand policy, we have reserved our right to continue to apply an 'economic needs test' to the temporary entry of EU contractual services suppliers – i.e. to EU business people that are entering New Zealand to complete a short-term contract.
<p>Chapter 10 – Domestic Regulation And General Provisions</p>	<ul style="list-style-type: none"> • The Domestic Regulation and General Provisions Sub-Sections of Chapter 10 aims to ensure that measures put in place in order to obtain authorisation to supply services– specifically those concerning licensing requirements and procedures, qualification requirements and procedures, and technical standards – are developed and administered in a reasonable, transparent, objective and impartial manner. • New Zealand services suppliers benefit from a regulatory environment that is based on clear, objective and impartial rules for, and decisions on, matters affecting trade in services in international markets. This is particularly the case given the high number of SMEs across New Zealand's services sector who do not have the resources to navigate opaque or overly burdensome requirements. These rules help provide clarity and transparency.
<p>Chapter 10 - Telecommunications Services</p>	<ul style="list-style-type: none"> • The Telecommunications Services Sub-Section of Chapter 10 sets out regulatory disciplines that underpin effective market access and competitive markets in telecommunications services between New Zealand and the EU. The EU and New Zealand recognise that telecommunications services are an important infrastructure enabler for trade in goods and services, as well as a distinct services sector in its own right. • The Sub-section builds on the disciplines developed in the GATS Telecommunications Annex, extending and updating these original disciplines to reflect the developments in approaches to regulation since the conclusion of the GATS in the 1990s.

	<ul style="list-style-type: none"> The Sub-section provides a clear indication to international service suppliers and investors that New Zealand has put in place a pro-competitive regulatory framework for the telecommunications sector that is consistent with international practice and focussed on the long-term benefits to end-users of telecommunications services.
Chapter 10 – Financial Services	<ul style="list-style-type: none"> The Financial Services Sub-section in Chapter 10 establishes a framework of rules governing cross-border trade in financial services between the Parties. Specific investment-related provisions that apply in the case of the Financial Services Section are also detailed. The Sub-section provides clarity for businesses that each Party's commitments will apply to all aspects of the financial services sector, except where detailed in the schedule of non-conforming measures (which effectively carves out those sensitive sectors). The framework of rules provided by the Financial Services Sub-section underpins financial services-related trade and investment activity between our two economies, providing increased certainty and predictability to financial services suppliers and their consumers. The section includes market access commitments that ensure New Zealand's financial service suppliers can operate in the EU (and vice versa) without being subject to, among other things, caps on the number of established financial services suppliers or the value of transactions; or requirements to use a particular type of legal entity or joint venture to provide the service.
Chapter 10 – International Maritime Transport Services	<ul style="list-style-type: none"> The International Maritime Transport Services Sub-section of Chapter 10 requires most favoured nation (which prevents unfavourable discrimination between foreign services suppliers of different nationalities) and national treatment (which prevents unfavourable discrimination between foreign and domestic service providers) to be accorded to international maritime transport service suppliers of the EU and New Zealand with respect to: <ul style="list-style-type: none"> access and fees and charges for the use of ports; port infrastructure and services (such as pilotage, provisioning, fuelling and watering, and shore-based operational services essential to ship operations, etc); and the use of maritime auxiliary services, and facilities for loading and unloading. While New Zealand hasn't previously included a Section on International Maritime Transport Services in our FTAs, these commitments provides a clear understanding of the EU regulatory environment to New Zealand service providers operating in the maritime sector, allowing them to further develop their businesses during this period of supply chain uncertainties.

Chapter 11 – Capital Movements, Payments and Transfers	<ul style="list-style-type: none">• This Chapter requires that both New Zealand and the EU to permit transfers to be made freely and without delay into and out of their territories in accordance with the Articles of Agreement of the International Monetary Fund.• The Chapter also requires that both New Zealand and the EU allow for the free movement of capital for the purpose of investment liberalisation and other transactions provided for under the Services, Investment Liberalisation and Digital Trade Chapters.• There are exceptions to these requirements for matters including bankruptcy, insolvency, protection of the rights of creditors, and criminal or penal offences.• This is the first time New Zealand has agreed to these obligations in a standalone chapter of an FTA, however, these obligations are consistent with obligations found in other FTAs (usually in the General Exceptions Chapters).
Chapter 12 – Digital Trade	<ul style="list-style-type: none">• The Digital Trade Chapter focuses on creating an environment that enhances and facilitates trade through electronic means, as well as supports business and consumer confidence in engaging in digital trade.• Provisions that provide for the adoption of common approaches and interoperability in regulatory frameworks aim to reduce the cost of doing business across borders, by reducing paper requirements and associated transaction costs. This includes supporting the use of e-contracts, e-authorisation, and the promotion and adoption of standards in respect of e-invoicing. The chapter also contains a new commitment that seeks to ensure that online services suppliers do not face greater licencing requirements than offline service suppliers.• It will also provide for consumer confidence by requiring the adoption of legal frameworks that provide for online consumer protection as well as the reduction of SPAM. It also ensuring that the government can take any steps it deems necessary to protect personal information and data.• It also seeks to avoid unnecessary barriers to digital trade. In particular, it seeks to prevent the imposition of localisation requirements for the use of computing facilities or the storage and processing of data for digital trade covered by the chapter. It also seeks to provide appropriate protections from unnecessary disclosure requirements for New Zealand exporters of their proprietary software. Similarly the prohibition on the imposition of customs duties on electronic transmissions as well as publishing and accepting electronic versions of trade administration documents similarly support the objective of supporting businesses at the border.• There are also outcomes that respond to the findings of the Waitangi Tribunal's third and final report on certain e-commerce provisions in the Comprehensive and Progressive Trans-Pacific Partnership agreement (WAI2522). In particular, it makes clear that the Government can take measures to promote and protect Māori rights, interests, duties and responsibilities in respect of trade enabled by electronic means.

<p>Chapter 13 – Energy and Raw Materials</p>	<ul style="list-style-type: none"> • The objectives of this Chapter are to facilitate trade and investment between the Parties so as to promote, develop and increase energy generation from renewable sources and the sustainable production of raw materials, including through the use of green technologies. • The chapter reflects a shared commitment to energy and raw materials markets that are competitive, transparent and undistorted, though promoting non-discriminatory access to resources and infrastructure. • All outcomes agreed are in line with New Zealand’s current and likely future domestic policy and regulatory settings, preserve the Government’s ability to effectively regulate energy and raw materials markets and to effectively regulate in relation to risk management in the energy and raw materials sectors. The chapter does not apply to agricultural, forestry or fisheries products. • Furthermore, the chapter will ensure: <ul style="list-style-type: none"> ○ New Zealand companies and investors have transparent and non-discriminatory access to electricity infrastructure in the EU, and that authorisations to explore or produce electricity, raw materials and hydrocarbons are granted through a transparent process and in an objective and impartial manner; ○ strong commitments exist for environment impact assessments in the EU and New Zealand related to the production of energy goods or raw materials; ○ new opportunities for the promotion of research, development and innovation on energy efficiency, renewable energy and raw materials, with a partner with world-leading credentials in these areas.
<p>Chapter 14 – Public Procurement</p>	<ul style="list-style-type: none"> • The Public Procurement chapter establishes open, fair and transparent conditions of competition in the public procurement markets covered by the chapter. Businesses from New Zealand and the European Union are afforded treatment equal to the treatment given to domestic suppliers in bidding for government contracts covered by the chapter. • The commitments in the chapter are based on the WTO Agreement on Government Procurement (WTO GPA) and are consistent with New Zealand’s government procurement policy.

	<ul style="list-style-type: none">• The chapter text builds on the commitments already made by the Parties in the WTO GPA. The chapter text overtly acknowledges the potential for procurement to be used to advance environmental and social policies, for example New Zealand's progressive procurement policy. It also enables government agencies to select suppliers with responsible and ethical business practices and respect international standards relating to labour and human rights.• Both Parties have made improvements to the market access already covered under the WTO GPA. The new opportunities for New Zealand exporters are in respect of additional entities and sectors covered. This includes almost 200 additional central government entities across the EU's 27 Member States, giving New Zealand full coverage of the EU's central government entities, some health-related goods by the EU's regional contracting authorities, and coverage of entities operating in the fields of airport facilities and maritime, inland port or terminal facilities.• The Parties have agreed to further negotiations in the event that in future, New Zealand's government procurement policy extends to a wider set of government agencies or if New Zealand expands its coverage of agencies under another free trade agreement.
Chapter 15 – Competition	<ul style="list-style-type: none">• The Competition Chapter ensures effective competition laws and regulations are maintained and enforced, supporting open and competitive markets as well as free and undistorted competition in trade and investment. This shared commitment benefits all New Zealand private and public enterprises, as well as New Zealand consumers.• New Zealand has had well-developed and well-functioning competition law for a number of years. The obligations in this chapter are consistent with New Zealand's competition laws, as detailed in the Commerce Act 1986, which prohibits anti-competitive conduct and provides a private right of action.
Chapter 16 – Subsidies	<ul style="list-style-type: none">• The Subsidies Chapter recognises that subsidies can necessary to achieve a public policy objective, however, certain subsidies have the potential to distort markets and interfere with price signals, leading to unfair competition in both domestic and international markets• The Chapter introduces transparency requirements for subsidies granted by either Party, including for services subsidies.• The Chapter prohibits certain forms of subsidies, including harmful fisheries subsidies, subsidies of unlimited guarantees of debt, or to insolvent or near-insolvent enterprises where there is no credible restricting plan.

Chapter 17 – State-owned Enterprises	<ul style="list-style-type: none"> • The State Owned Enterprises (SOEs) Chapter establishes an equal footing between private competitors and enterprises that are owned by the state, controlled by the state, or afforded special rights or privileges from the state. Both Parties are required to operate in accordance with commercial considerations and national treatment when acting commercially with the other Party; • The Chapter recognises each Party’s right to establish and maintain SOEs and monopolies. New Zealand’s right to deliver policy objectives through enterprises owned, or given special rights or privileges, by the state is protected. Existing commercial operating models for SOEs in New Zealand can be maintained. • The commitments made in the Chapter broadly align with the current practices and the principles behind the New Zealand’s State-Owned Enterprises Act 1986. New Zealand is already subject to similar commitments arising from other free trade agreements, including with the United Kingdom and through the CPTPP
Chapter 18 – Intellectual Property	<ul style="list-style-type: none"> • The chapter on intellectual property complements the rights and obligations the EU and New Zealand already have under the WTO Agreement on Trade-Related Intellectual Property (TRIPs) and other international intellectual property agreements. • New Zealand has agreed to extend copyright terms by 20 years for authors, performers and producers. New Zealand will also extend the protection it gives to digital locks (technological protection measures) to include preventing a person undertaking an act to circumvent those locks other than in limited circumstances. New Zealand will have four years from entry into force of the Agreement to implement these changes to the Copyright Act 1994. • New Zealand and the EU will each protect a list of the other’s geographical indications. This means that only EU producers will be able to use the protected EU geographical indications on relevant products imported and sold in New Zealand. Some of these protections will be phased in over between 5 and 9 years, but eventually New Zealand producers will need to stop using terms like “sherry”, “port” and “feta” on their products. We have agreed that existing users can continue to use ‘gruyere’ and ‘parmesan’. The EU will protect twenty-three New Zealand wine and spirits GIs from entry into force (including Marlborough, Central Otago, Waiheke Island and Martinborough). • The intellectual property chapter will also require that, as was agreed in the UK FTA, we establish an artist’s resale right regime that operates on a reciprocal basis with the EU’s corresponding regime. • New Zealand has also agreed to make all reasonable efforts to accede to the Hague Agreement Concerning the

	International Registration of Industrial Designs (Hague Agreement) and to join the Beijing Treaty on Audio-visual Performances.
Chapter 19 – Trade and Sustainable Development	<ul style="list-style-type: none"> • The commitments in the chapter are consistent with New Zealand’s existing domestic legal settings and international legal commitments and include high-quality provisions to promote mutually supportive trade, environment, labour and gender policies and practices. This includes binding commitments to effectively implement existing international conventions and agreements currently in force relating to these areas, encouraging high levels of protection and providing for cooperation and dialogue between the Parties on these issues. • The chapter will help to ensure a level playing field for New Zealand exporters, importers and their employees by setting enforceable labour and environment obligations for both parties and requiring that they not undermine their respective labour and environment laws or fail to enforce them to encourage trade or investment. Equally, the chapter recognises that labour and environment laws or other measures should not be used as disguised restrictions on trade or investment. • The chapter contains, strong outcomes on labour rights and protections, illegal logging, conservation in the areas of biological diversity and sustainable fisheries management and in climate change. • It goes beyond New Zealand’s previous trade and sustainability FTA outcomes in a number of areas, containing the strongest commitments agreed in an FTA to promote women’s economic empowerment; the commitment that each party make continued and sustained progress towards the ratification of any unratified Fundamental ILO Conventions; and, commitments on climate change and the Paris Agreement that are unique in an FTA, • In line with New Zealand’s preference, the dispute settlement mechanism applies across the TSD Chapter (including gender, labour and environment elements), however the EU could only agree to final recourse to trade sanctions as part of the dispute settlement mechanism for the climate commitment set out above, and for possible breaches of ILO fundamental labour rights.
Chapter 20 – Māori Trade and Economic Cooperation	<ul style="list-style-type: none"> • The Chapter provides a new platform to cooperate with the EU with the objective to enable Maori to benefit from the Agreement and to advance Māori economic aspirations and <i>wellbeing</i>. • The chapter acknowledges Te Tiriti/The Treaty as a foundational document of constitutional importance to New Zealand, and references Māori concepts including Te Ao Māori, Mātauranga Māori, Tikanga Māori, Kaupapa Māori, Taonga and Wahine Māori. • The chapter defines ‘Mānuka’ as the Māori word, used exclusively for the <i>Leptospermum scoparium</i> tree grown in New

	<p>Zealand and derivative products such as honey and oil. It describes ‘Manuka’ as culturally important to Māori as a taonga and traditional medicine.</p> <ul style="list-style-type: none"> The Chapter includes a number of areas for possible cooperation between New Zealand and the EU. This includes collaboration to: enhance the ability for Māori enterprises to benefit from the FTA’s trade and investment opportunities; strengthen links between EU and Māori enterprises (with a particular emphasis on SMEs); support science, research and innovation links; and develop awareness and exchange information on geographical indications.
Chapter 21 – Small and Medium-Sized Enterprises	<ul style="list-style-type: none"> The objective of the Chapter is to enhance the ability of small and medium-sized enterprises (SMEs) to benefit from the Agreement. It is primarily focused on making information for SMEs easily accessible in digital form. This includes information designed for SMEs about the Agreement, as well as product-specific and generic information about each Party’s market. Each Party will designate an SMEs contact point that is responsible, among other things, for ensuring that the needs of SMEs are taken into account in the implementation of the Agreement.
Chapter 22 – Good Regulatory Practice and Regulatory Cooperation	<ul style="list-style-type: none"> The chapter reflects the shared value both Parties place on promoting good regulatory practice. It includes commitments to good regulatory practice processes, such as impact assessment, public consultation and transparency. The chapter also enables one Party to propose a regulatory cooperation activity to the other, through designated contact points. Implementation of regulatory cooperation activities may, where appropriate, be carried out by the relevant departments or agencies in each Party.
Chapter 23 – Transparency	<ul style="list-style-type: none"> The Chapter requires each Party to promptly publish its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by the FTA (and where feasible online). Each Party must maintain judicial, arbitral or administrative tribunals or procedures for the prompt review and, if warranted, correction of administrative decisions with respect to any matter covered by the FTA. Each Party must maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by the FTA. Upon request of a Party, the other Party shall promptly provide information and respond to questions.
Chapter 24 –	<ul style="list-style-type: none"> The Chapter sets out the institutional arrangements for the FTA, including the powers and responsibilities of the Trade

Institutional Provisions	<p>Committee and other committees for certain chapters. The Trade Committee may be co-chaired by the New Zealand and EU Minister/Commissioner responsible for trade, or it may be co-chaired by senior officials.</p> <ul style="list-style-type: none">• New Zealand and the EU must each establish a domestic advisory group to advise each Party (separately) on issues covered by the FTA. New Zealand's advisory group shall include Māori.• New Zealand and the EU must facilitate the organisation of a joint civil society forum for non-governmental organisations, business and employers' organisations, trade unions and Māori and to meet with the forum to discuss the implementation of the FTA. At both a national level and in the joint forum, these civil society groups will be able to voice their views and provide input to discussions on how the FTA is being implemented.
Chapter 25 – Exceptions and General Provisions	<ul style="list-style-type: none">• The Chapter sets out a number of exceptions that provide a backstop to ensure that the FTA does not impair a government's ability to make policy and undertake measures to further that policy. These exceptions should be seen in addition to the specific flexibilities negotiated in different chapters of the FTA.• Exceptions cover a wide variety of policy areas that are critical for government, including health, environment, security, public order, taxation, and te Tiriti o Waitangi / the Treaty of Waitangi.
Chapter 26 – Dispute Settlement	<ul style="list-style-type: none">• The Chapter provides a robust and transparent dispute resolution mechanism that enables New Zealand or the EU to pursue a matter to arbitration before a panel of three arbitrators should the other Party fail to act consistently with its obligations under the FTA.• If a complaining Party brings a successful claim against the other Party, and that Party did not bring the relevant measure into compliance with the FTA, the complaining Party could suspend its compliance with certain FTA obligations (for example, by imposing increased tariffs on products from the other Party) in order to induce the other Party to bring their measure into compliance.• The Chapter also includes consultations and mediation mechanisms to help New Zealand and the EU avoid disputes.
Chapter 27 – Final Provisions	<ul style="list-style-type: none">• The Chapter includes technical provisions that support the operation of the FTA, including how the FTA will enter into force and how it can be amended.• New Zealand or the EU may request Ministerial consultations and withdraw from the FTA in the event of a Party committing:<ul style="list-style-type: none">○ a serious and substantial violation of the New Zealand-EU Partnership Agreement on Relations and Cooperation that threatens international peace and security; or

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| | <ul style="list-style-type: none">○ an act or omission that materially defeats the object and purpose of the Paris Agreement. |
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ANNEX 2: NZ-EU FTA – GEOGRAPHICAL INDICATIONS OUTCOME

1. On entry into force of the NZ-EU FTA, New Zealand must provide protection for 1,976 EU Geographical Indications (GIs) for wines, spirits and foodstuffs. In addition, the EU can nominate up to 30 additional EU GIs for protection in New Zealand every three year.
2. The NZ-EU FTA specifies the level of protection New Zealand is required to provide the protected EU GIs as well as administrative enforcement and Customs border measure requirements.
3. New Zealand currently provides protection for GIs by a number of means including the Geographical Indications (Wines and Spirits) Registration Act 2006 (**GIs Act**). This provides a registration regime for GIs for wines and spirits (but not foodstuffs or other products). I propose that New Zealand's GI obligations under the NZ-EU FTA be met through amendments to the GIs Act as well as technical changes to the Trade Marks Act 2002.

Amendments to the GIs legislative regime

Registration

4. The legislation will need to provide for the registration of the 1,976 EU wine, spirits and foodstuff GIs. I recommend that these GIs be placed in Part 3 of the Register established under section 42 of the GIs Act. I also note that some of the information normally required to be included as part of a registration under section 42(3) (such as the name of the registrant) will not be relevant or required for the EU GIs.

5. A number of exceptions to the protection of EU GIs were agreed as part of the negotiated FTA outcome. This includes transition periods of 5 or 9 years for existing users of term like "Prosecco" or "Port" and a right for certain existing users of the terms "Gruyere" and "Parmesan" to continue their use, despite the protection provided by the FTA. These exceptions will need to be notified to the public.

No provision for registration of non-EU foodstuff GIs

6. While the GI Act will protect the EU foodstuff GIs agreed under the FTA, the Act will not be amended to allow for the protection of GIs for foodstuffs (or any other non-wine spirits product) from New Zealand or anywhere else.
7. The Ministry of Business, Innovation and Employment (MBIE) has advised that, following its consultation, there appears little demand from New Zealand producers for the GI regime to be extended to non-wine and spirits GIs. It is also MBIE's view that, if the regime was to be extended to GIs other than wine and spirit GIs, it is likely that most or all such GIs would originate from outside New Zealand. The protection of such GIs would not directly

benefit New Zealand and may only restrict terminology used by other producers in the New Zealand market.

8. Some Māori businesses, iwi and hapu have expressed interest in the use of GIs for foodstuff (including honey) and other products. These interests are being considered as part of the Te Pae Tawhiti work programme being run by Te Puni Kōkiri. The changes to the GI Act resulting from the FTA will not preclude any later changes to address Māori interests.

Protection of additional EU nominated GIs

9. The FTA provides that, every three years each party can nominate up to 30 of its existing domestic GIs for protection under the FTA in the other party's territory. The EU and NZ will need to agree to any nominated GI before it is added to the list of GIs protected under the agreement. As with all GIs protected under the FTA, no fees are payable for such nominations.

10. It is proposed that EU GI nominations will go through a domestic examination and opposition process run by the Intellectual Property Office of New Zealand (IPONZ). This will allow nominations to be examined and opposed on grounds set out in the FTA, including on the basis that the nominated term is already commonly used in New Zealand to describe the relevant good, is the name of a plant variety or animal breed, or is offensive. If a nominated name is approved through the IPONZ process (including any appeal within that process), its protection under the FTA will then need to be confirmed by agreement of New Zealand and the EU before it is registered. If the nomination is declined by the IPONZ process, it will not proceed to registration, although the nomination may be further discussed by New Zealand and the EU bilaterally.

11. I recommend the GI Act be amended to allow for the consideration and registration of additional EU GIs on this basis.

Scope of protection of GIs

12. The NZ-EU FTA requires New Zealand to provide the EU GIs a standard of protection that is similar to the standard provided under Article 23 of the WTO TRIPS Agreement¹, but that is extended to all foodstuffs, not just wines and spirits and also applies in relation to transliterations (not just translations) of a GI.

13. New Zealand must provide an interested person the legal means to prevent the commercial use of a GI for a good (such as wine) in relation to the same type good (another wine) that does not meet the specified requirements for the use of the GI (in particular – that it does not come from the relevant geographical origin) even if:

13.1. the true origin of the good is indicated;

¹ Agreement on Trade Related Aspects of Intellectual Property Rights.

13.2. the GI is used in translation² or transliteration³; or

13.3. the GI is accompanied by expressions such as "kind", "type", "style", "imitation", or the like.

14. These conditions are the same as existing conditions that apply to wine and spirits GIs under the GIs Act, other than the “transliteration” condition that is included in the FTA text but is not included in the GI Act. I recommend that the GI Act should be amended to include this additional condition, so that all registered GIs get the same protection as EU GIs protected under the FTA. Most of the existing New Zealand GI registrations are for New Zealand wine GIs.

15. The other protections required under the FTA can be met under New Zealand’s existing law and will not require legislative changes. These include providing interested parties the ability to prevent:

15.1. the use of product descriptions that indicate or suggest that a product originates in a geographical area other than its true place of origin in a manner that misleads the public as to the origin or nature of the product; and

15.2. uses of a GI that might constitute an act of unfair competition under Article 10bis of the Paris Convention. This includes commercial use of a GI that exploits the reputation of the GI, including when the product associated with the GI is used as an ingredient.

Administrative enforcement of GIs

16. The NZ-EU FTA requires that New Zealand provide for administrative enforcement of the EU GIs, which could be on the enforcing agency’s initiative or on written request of an interested party (‘administrative enforcement’). The GIs Act does not currently provide for administrative enforcement. Any enforcement would need to take account of exceptions to GI protection included in the agreement, including the transition periods provided to existing users of certain GI terms.

17. I intend that administrative enforcement be available for all GIs registered in New Zealand, not just EU GIs, to make it fair for the New Zealand GI holders.

18. I intend that the Ministry for Primary Industries have responsibility for administrative enforcement of GIs in New Zealand, owing to their engagement and experience with the food and beverage sector in New Zealand, and their regulatory experience in these areas.

² For greater certainty, it is understood that this is assessed on a case-by-case basis. This provision does not apply where evidence is provided that there is no link between the geographical indication and the translated term.

³ For the purposes of this Sub-Section, transliteration covers the conversion of characters following the phonetics of the original language or languages of the relevant geographical indication.

19. The costs of establishing and operating a unit within the Ministry for Primary Industries to provide administration enforcement is estimated to be up to \$915,000 per annum (equivalent to 6 FTEs). Separate litigation funding of up to \$190,000 per annum could be needed to cover any enforcement action taken through the courts. These estimates are based on MPI taking a VADE approach towards compliance (Voluntary, Assisted, Directed, Enforced Model). This approach will make use of education and advice, communications to industry, warnings or cease and desist letters and Notice of Directions, investigations and liaison with complainant and businesses, compliance orders (search and seizure, information disclosure) and then, when necessary, prosecutions. It is expected that costs will reduce over time as the market becomes familiar with the GI compliance requirements.

20. MPI will need suitable powers to investigate possible infringements of registered GIs and take action as appropriate. This may include a range of potential action including education of producers, publishing guidance documents, including issuing 'cease and desist letters' and, in limited cases, to initiate court proceedings against infringers of registered GIs. The most viable option may be to provide powers similar to those provided to the Commerce Commission in the Fair Trading Act. These include warranted search powers and the power to require a person to supply information or documents or give evidence in person. Infringement of a GI is conduct that may potentially mislead consumers as to the origin or characteristics of a product.

21. I recommend that the agency responsible for providing administrative enforcement of registered GIs be provided with appropriate enforcement powers that may be based on those provided to the Commerce Commission in the Fair Trading Act 1986.

22. While not a direct requirement of the FTA, for consistency I recommend that the same remedies that are made available for civil enforcement be available to the agency providing administrative enforcement. I also recommend that, for the purposes of administrative enforcement, the courts should also have the ability to order a person who has infringed a GI to pay to the Crown the profits they have derived from infringing activity, as an alternative to pay damages to lawful GI users, as a deterrent to any further misuse of the GI.

Civil Enforcement of GIs

23. The NZ-EU FTA does not directly require New Zealand to make any changes to its existing regime for the civil enforcement of GIs.

24. However, following MBIE's advice and noting the significantly greater number of GIs that will now be registered in New Zealand, it is recommended that enforcement procedures for GIs would allow an interested party to start court proceedings for infringement of a GI. Under the GIs Act, infringement of a GI is treated as a breach of section 9 of the Fair Trading Act 1986. I recommend that the GI Act be amended to provide for civil infringement proceedings similar to those provided in the Trade Marks Act 2002. I also recommend that the GI Act be amended to provide for the High Court hear and determine proceedings for

infringement of registered GIs, and that proceedings can only be brought by interested persons.

25. I recommend that the High Court be able to award the same remedies for infringement of a registered GI as are available for infringement of a registered Trade Mark. These include, damages, account of profits, injunctions, delivery up of infringing goods and removal of the infringing GI from products and their packaging, but would not include 'additional damages' as provided for in the Trade Marks Act.

Border Measures

26. Border measures allow Customs Officers, either on their own initiative, or at the request of rights holders to detain goods suspected of infringing intellectual property rights. The NZ-EU FTA requires New Zealand to provide for border measures at least for copyright, trade marks and GIs. The Trade Marks Act 2002 and the Copyright Act 1994 already include border measures.

27. The GIs Act does not include provision for border measures, and I recommend that the GIs Act be amended to include a border measures regime based on that set out under the Trade Marks Act 2002. I also recommend that only an interested person be able to lodge a Customs notice in relation to a registered GI.

Amendments to the Trade Marks Act

28. There will be costs to IPONZ in setting up a new part of the register for EU GIs and ingoing costs to maintain the register and add any further EU GIs that the EU has requested that New Zealand protect. IPONZ estimates establishment costs of \$20,000 and ongoing costs of \$10,000 per year.

29. No fees can be charged for any GIs protected, or considered for protection, under the FTA. Currently, the costs of maintaining the register are met from application and renewal fees payable by the registrants of the 27 wine and spirit GIs currently on the register. It would be inequitable to require these registrants to meet all of the costs of establishing and maintaining the register of EU GIs. Instead I propose that the establishment costs of \$20,000 to establish the register of EU GIs be met from MBIE's baseline account. I also propose that the subsequent year-on-year costs of \$10,000 should be recovered from application and renewal fees recovered under the Trade Marks Act 2002 and the GI Act.

30. This would require amendment of the Trade Marks Act 2002 to allow fees recovered from applicants and trade mark owners to be used to maintain the register of EU GIs. I recommend that an appropriate amendment be made to the Trade Marks Act 2002.

Summary of legislative implications

31. A summary of the legislative implications and recommended legislative changes arising from the GI obligations of the NZ-EU FTA is set out below:

- 31.1. EU GIs protected under the NZ-EU FTA should be placed in Part 3 of the Register of GIs established under section 42 of the GI Act but only information that is relevant to EU GIs will be required to be kept;
- 31.2. A process will be established so that: where the EU nominates a new GI for protection under Article 18.33(2) of the NZ-EU FTA, that nominated term will go through domestic examination and opposition proceedings run by the Intellectual Property Office of New Zealand (IPONZ). A nomination approved by IPONZ or through appeal of an IPONZ decision will only proceed to registration if the Ministry of Foreign Affairs and Trade advises IPONZ that that protection has been agreed by New Zealand and the EU under the NZ-EU FTA. A nomination rejected by IPONZ or any appeal of an IPONZ decision, will not proceed to registration through this process;
- 31.3. All GIs protected in New Zealand, including those protected as a result of the NZ-EU FTA or otherwise, will receive the same standard of protection, including to allow an interested party to prevent infringing use of a GI, even if that GI is being used as a transliteration;
- 31.4. All GIs protected in New Zealand should be enforceable through civil infringement proceedings:
- based on those provided in the Trade Marks Act 2002;
 - that may only be initiated by interested persons;
 - that allow the High Court to hear and determine proceedings for infringement of registered GIs;
 - that provide remedies for infringement of a registered GI be based on those in the Trade Marks Act 2002;
- 31.5. The enforcement agency should be empowered to provide administrative enforcement of registered GIs, including by being provided with necessary investigative and enforcement powers, including offences, defences and fines;
- 31.6. The enforcement agency should be empowered to initiate civil court proceedings against infringers of registered GIs and seek remedies that are the the same as those available for civil enforcement in paragraph 31.4;
- 31.7. The Courts, in response to an action taken by the enforcement agency, should be allowed to order an infringer to pay to the Crown profits they have derived from their infringing activity;

- 31.8. The GIs Act should include a border measures regime for GIs that is based on that set out under the Trade Marks Act 2002, and that only interested persons are able to lodge a notice with Custom;
- 31.9. The Trade Marks Act 2002 should be amended to clarify that consideration of GI rights under the Trade Marks Act includes consideration of the EU GIs registered under Part 3 of the GIs Register and that permit fees charged under that Act to be used to maintain the register of EU GIs registered under the NZ-EU FTA.

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